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## ELECTION COMMISSION, INDIA

### NOTIFICATIONS

*New Delhi, the 5th June 1953*

S.R.O. 1192.—Whereas the election of Shri Padam Dev of Bhamnoli, Tahsil Rohru, District Mahasu (Himachal Pradesh), as a member of the Legislative Assembly of Himachal Pradesh, from the Rohru Constituency of that Assembly, had been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Gian Singh of Badshah, Tahsil Rohru, District Mahasu (Himachal Pradesh);

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in exercise of the powers conferred on it by section 109 of the said Act, granted leave to Shri Gian Singh to withdraw the said petition;

And whereas the said Tribunal has, in pursuance of the provisions of clause (c) of sub-section (3) of section 110 of the said Act, allowed Shri Satya Dev to be substituted as petitioner in place of Shri Gian Singh of Badshah, Tahsil Rohru, District Mahasu (Himachal Pradesh);

And whereas the said Tribunal has, in pursuance of the provisions of section 103 of the said Act, sent a copy of its Order to the Commission.

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

## ELECTION TRIBUNAL, HIMACHAL PRADESH, SIMLA

ELECTION PETITION No. 14 OF 1952

Shri Satya Dev Bushahri—(substituted) Petitioner.

*Versus*

1. Shri Padam Dev.
2. Shri Nupa.
3. Shri Rameshwar Das.
4. Shri Sanam Ram.
5. Shri Gian Singh—Respondents.

### JUDGMENT

This petition relates to an election from Rohru constituency in Mahasu district of Himachal Pradesh to the Legislative Assembly of that State. Nomination papers were filed on 12th October 1951. Their scrutiny came off on 17th October 1951. Kanwar Shiv Pal, Deputy Commissioner, Mahasu district, at Kasumpti, was the Returning Officer. After the acceptance of nominations, there were five candidates from this constituency, all of them being respondents now. Respondent No. 5 was originally the petitioner in this case. He withdrew and was substituted by Shri Satya Dev.

There were 11 polling stations in the constituency. Polling at all of them took place on 25th November 1951. The result was declared on 30th November 1951 and was published in the *Gazette of India*, dated 20th December 1951. Shri Padam Dev respondent No. 1 was declared elected. It is common ground that Shri Padam Dev secured 1387 votes. According to paragraph 3 of the petition, the original petitioner secured 533 votes. Shri Nupa respondent No. 2, 937, Shri Rameshwari Das respondent No. 3, 625 and Shri Sanam Ram respondent No. 4, 576. It is common ground that Pt. Padam Dev was a nominee of the Congress. According to Shri Gian Singh, the original petitioner, (P.W. 10), the said petitioner was a Jan Sangh candidate; Shri Sanam Ram was a nominee of the Kisan Mazdoor Praja Party; Shri Nupa represented Scheduled Castes Federation; and Shri Rameshwari Das stood as an independent candidate.

This petition was originally brought by Shri Gian Singh. It was presented before the Election Commission on 14th February 1952. On 4th August 1952, Shri Gian Singh applied before this Tribunal for withdrawal of the petition. After notices were issued in accordance with section 109 of the Representation of the People Act, No. XLIII of 1951, the withdrawal was allowed on 20th September 1952. Notices of the grant of withdrawal were then issued under section 110. Shri Satya Dev, an elector in the constituency, applied within the prescribed period, to be substituted for the original petitioner and this was allowed on 1st November 1952. Shri Satya Dev also applied for permission to make some amendments in the petition. This prayer was disallowed on the aforesaid date. As was, however, suggested by him, Shri Gian Singh was then impleaded as respondent No. 5.

The petition seeks to have the election of Shri Padam Dev respondent No. 1 to be declared void on the alleged grounds of various corrupt and illegal practices having been committed by him. The commission of these was, of course, totally denied by the respondent in his written statement. The petitioner filed some Lists or Annexures with the petition, giving details of the alleged corrupt and illegal practices etc. The allegations, in this connection, would be explained, when dealing with the various issues.

Shri Nupa respondent No. 2 filed a brief written statement and prayed that the petition be dismissed, so far as he was concerned, with costs. In paragraphs 8 and 9 of the petition, the petitioner had made some allegations against the said respondent No. 2, which were denied by the respondent. On 21st November 1952, before the framing of issues, the substituted petitioner Shri Satya Dev made a statement that he did not want any issues to be framed regarding respondent No. 2, in connection with paragraphs 8 and 9 of the petition.

In paragraph 12 of the petition it was stated that the petitioner claimed a recount and scrutiny of votes. This was given up by the substituted petitioner in his aforesaid statement of 21st November 1952. In paragraph 7 of the petition the name of the Pharmacy of Shri Padam Dev respondent was said to be "Simla Ayurvedic Pharmacy". In his aforesaid statement of 21st November 1952, the substituted petitioner stated that the aforesaid name was wrongly given in the petition and that the name of the Pharmacy in fact was D.A.V. Pharmacy. Although an amendment in this connection was not allowed, yet the order of the Tribunal dated 21st November 1952 permitted evidence to be led, in due course, as to what was the name of the respondent's Pharmacy.

While the corrupt practices of bribery, undue influence, treating etc were also alleged in the petition to have been committed by the respondent, emphasis was laid on his having procured assistance of various Government servants for furthering the prospects of his election. It was further emphasised that the respondent was disqualified for standing as a candidate, because "he was a contractor interested in a contract for the supply of Ayurvedic medicines to the Himachal Pradesh Government as well as to the Government of India" (vide paragraph 7 of the petition). It was also emphasised that the return of election expenses filed by the respondent was false in material particulars and was not in accordance with law. Arguments centred mostly round these three matters, more so round the first two of them.

There was also a prayer in the petition that the petitioner may be declared to have been duly elected. This was made by the original petitioner Shri Gian Singh who was a candidate. The present petitioner Shri Satya Dev was, however, not a candidate from this constituency but was only an elector. Therefore, admittedly this prayer was now redundant.

Shri Padam Dev respondent No. 1, who was the successful candidate, is the contesting respondent in the case. Shri Nupa did not take any interest beyond filing a brief written statement. Shri Rameshwari Das and Shri Sanam Ram, respondents Nos. 3 and 4 respectively did not contest the petition as respondents, but both of them appeared as witnesses for the petitioner, being P.W. 18 and P.W.

24 respectively. Shri Padam Dev, besides denying the allegations made against him by the petitioner alleged in his written statement that the petitioner and respondents Nos. 2 to 4 were in collusion and had made a common cause against him (*vide* paragraph 8 of the written statement).

The following issues were framed in the case on 21st November 1952:—

(1) Is the election of respondent No. 1 void on account of the alleged corrupt practices referred to in clauses (e) to (f) of paragraph 5 of the petition and in the relative lists?

(2) Is the return of election expenses filed by respondent No. 1 false in material particulars and not in accordance with law?

If so, what is its effect?

(3) Does respondent No. 1 lose all his votes and should the same be deemed as "thrown away" for reasons given in paragraph 6?

(4) (a) Was respondent No. 1 disqualified for standing as a candidate at the election for reasons alleged in paragraph 7; if so, what is its effect?

(b) Is he, for the same reasons, disqualified for remaining a member of the H. P. Legislative Assembly; if so, what is its effect?

(c) Was the alleged disqualification known to the voters and should all his votes be deemed to be "thrown away" on that account?

(5) Were Shri Gian Singh petitioner and respondents Nos. 2 to 4 in collusion against respondent No. 1, and did they make a common cause against him?

If so, what is its effect?

(6) Were any illegalities and irregularities, as alleged in paragraph 11 and list "J", committed?

If so, what is its effect?

(7) Were the constituencies for elections to H. P. Legislative Assembly not delimited according to law, as alleged in paragraph 15?

If so, what is its effect?

(8) Is the election of respondent No. 1 void because the election was procured and induced, and the result of the election was materially affected, by corrupt and illegal practices, illegalities and irregularities?

The onus of all the aforesaid issues, except No. 5, was on the petitioner, while onus of issue No. 5 was on respondent No. 1.

**Issue No. 5.**—This issue No. 5 might well be summarily disposed of here. No evidence worth consideration was led on behalf of respondent No. 1 in connection with this issue; and no reference to this matter was made at all by his counsel in the course of his arguments. Our finding on issue No. 5 therefore is against respondent No. 1.

**Issue No. 7.**—On the other hand, no material whatsoever was brought on the record on behalf of the petitioner with regard to issue No. 7, and no reference was made to the matter of this issue at all in the course of arguments by the counsel for the petitioner. Therefore, we find on issue No. 7 against the petitioner.

**Issue No. 3.**—The counsel for the petitioner rightly observed in the course of his arguments that issue No. 3 had a significance only in respect of the original petitioner who was a candidate. In the relevant paragraph No. 6 of the petition, the votes obtained by the successful candidate were sought to be treated as "thrown away", because of his having committed corrupt practices etc., which will be dealt with under the other relevant issues. No separate finding has been asked for under this issue, nor need any be given.

**Issue No. 8.**—This issue is general and the finding on it would depend on the findings on the other remaining issues.

**Issue No. 6.**—This issue relates to illegalities and irregularities alleged to have been committed by the respondent and referred to in paragraph 11 of the petition and List J. Paragraph 11 contains only a general allegation about their having been committed and says that their details are given in List J. It adds: "These irregularities and illegalities affected the votes of the petitioner alone and but for these he would have secured a much larger number of votes than all the respondents". This being so, it seems that the allegations would hardly be material when the original petitioner, who was a candidate, has withdrawn his petition and the present petitioner was not a candidate. However, the details as given in List J would be briefly examined.

Item No. 1 of List J is to the effect that originally Badshah, the village of the original petitioner Shri Gian Singh, was announced as one of the polling stations, like Bhamnoli, the village of the respondent; but that subsequently, before the polling, Badshah was omitted from the list of polling stations. In evidence, this has been alleged by the original petitioner Shri Gian Singh as P.W. 10. But even he has not said that Shri Padam Dev respondent had any hand in the change. This matter was not at all referred to by the counsel for the petitioner in his arguments.

Item No. 2 is to the effect that Electoral Rolls at polling stations were not sealed. There is no evidence at all in this connection, nor was this matter referred to in arguments.

Item No. 3 says that several unauthorized persons entered the place where votes were being counted. This also is not proved and was not referred to in arguments. Moreover, the allegation is not material, as the present petitioner in his statement dated 21st November 1952, before the framing of issues, said that he did not claim a recount and scrutiny of votes. The matter concerned the original petitioner who was a candidate.

Item No. 4 says that the screens provided for polling booths were made of very thin cloth and the electors could be seen through the same. This appears to have been stated only by Narain Singh P.W. 13, maternal uncle and messenger of the original petitioner, with regard to Bashlog polling station. Even Naram Singh, however, admitted that ballot boxes could not be seen. On the other hand, several witnesses for the respondent, namely, R.Ws. 6, 7, 8, 9, 11, 12, 13 and 27 have given evidence with regard to polling stations at Bashlog, Bhamnoli, Bachuch, Tikkar and Kupri and have stated that everywhere polling booths were thickly screened and a man could not see from outside what was going on inside. This allegation, therefore, is not proved, nor was it referred to in arguments.

Regarding items Nos. 5 to 9, no proof was given, nor were the allegations referred to in arguments.

The last and 9th item is that on the polling day respondent No. 1 canvassed for himself within 100 yards of the polling stations Khalawan and Bashlog. No evidence was led regarding Khalawan. As regards Bashlog, evidence in this connection was given by three witnesses, all of whom are interested. They are the original petitioner Shri Gian Singh P.W. 10, his maternal uncle and messenger Narain Singh P.W. 13 and his nephew Mohinder Singh P.W. 20. Their evidence is also not free from discrepancies. On the other hand, Kewal Ram R.W. 7, Partap Singh R.W. 8, Amar Nath R.W. 13, Shri Bhagat Chand R.W. 16, Gibson R.W. 26 and the respondent himself R.W. 33 have stated that the respondent did not make any speech, nor did he canvass for himself, at Bashlog polling station on the polling day. This allegation also therefore is not substantiated.

This exhausts the list of alleged illegalities and irregularities contained in Annexure J. We, therefore, find on issue No. 6 against the petitioner.

**Issue No. 1.**—This relates to corrupt practices alleged in clauses (a) to (f) of paragraph 5 of the petition and in the relevant Lists.

Clause (a) of paragraph 5 of the petition alleges personation, the particulars of which are said to be given in List 'A'. In List 'A' it is alleged that one Ratku Kohli of village Koti, who was not a voter and was a minor, cast his vote at Bashlog polling station in place of his blind mother named Sodi and that this was done at the instance of the polling agent of respondent No. 1. Evidence in this connection was given only by the original petitioner Shri Gian Singh P.W. 10, a defeated candidate, and his aforesaid maternal uncle and messenger Narain Singh P.W. 13. Narain Singh stated that a son of Thakur Das of Karasa whose name he does not know and who, he said, was working for Pt. Padam Dev, got Ratku a ballot paper from the Patwari and that the witness himself applied the official ink to the index finger of Ratku, who is then said to have gone into the booth and cast his vote. Narain Singh admitted that he raised no objection to Ratku's going in for voting. As has been seen above, he himself applied the ink to Ratku's finger which would show that if the allegation is at all correct, Ratku cast his vote at the instance of Narain Singh who expected him to vote for Gian Singh. Shri Gian Singh P.W. 10 stated that he saw the minor Ratku going into the polling booth and later on enquiry Ratku told him that he had voted in place of his blind mother Sodi. Gian Singh admitted that he made no complaint. The counsel for the respondent remarked that better evidence which would have been of the ballot paper and Electoral Roll concerned and of Ratku, Sodi and the polling staff, had not been produced. In any case it cannot be said to be proved that, if any such minor cast a vote, it was done at the instance of any agent of the respondent. Generally speaking, it passes one's comprehension, how a boy was taken to be a woman and how Mrs. Sodi's ballot paper could be given to her son. This alleged corrupt practice, which was meant to have reference to sub-section (3) of section 123 of the Representation of the People Act, is thus not proved.

Clause (b) of paragraph 5 of the petition is to the effect that the respondent and his agents etc. published false statements of facts in relation to the candidature of the petitioner. This allegation has reference to sub-section (5) of the aforesaid section 123. In the aforesaid clause it is said that full particulars are given in List B. List B runs thus:—"it has already been mentioned in List D(9) where it has been explained as to how the respondent No. 1 with the help of his agents made false statements regarding the withdrawal of the petitioner's candidature". It is interesting to notice that while List D was to follow List B, List B says that "it has already been mentioned in List D(9)". Clause 9 of List D runs thus:—

"On 21st November 1951, Karam Chand Chauhan with the connivance of the respondent No. 1 as well as his agents Sital Singh and Kahan Chand Postmasters of Arhal and Rohru respectively told the voters of the neighbouring *ilaqa* and spread a rumour that the petitioner was man-handled at Tikkar by the villagers who did not want him to contest and as a result he had to leave behind his horse and kit. This was a wholly false rumour. Voters were also told that the petitioner had withdrawn from the contest".

Evidence with regard to this matter has been given by three witnesses for the petitioner, namely Ishwar Singh of Arhal P.W. 1, Joban Singh Lambardar of Chebri P.W. 12 and Narain Singh of Koti P.W. 13. P.W. 1 stated that a few days after the visit of Rajkumari Amrit Kaur to Arhal, Karam Chand Chauhan stated at a meeting at Arhal that Gian Singh was giving shoe-beating at Tikkar and therefore there was no chance of his success at the election. The Rajkumari had visited Arhal on 24th October 1951, vide the statement of Shri Bhag Chand R.W. 17, the Headmaster of the Government High School at Arhal, in the compound of which the meeting was held on the visit of the Rajkumari. A few days after that would mean in the end of October, while the allegation in the aforesaid clause 9 specifies the date to be 21st November 1951. Moreover, what Ishwar Singh has stated does not tally with the allegation as made in that clause. Again, Ishwar Singh says nothing about Kahan Chand and Sital Singh. P.W. 12 stated that Karam Chand and Kahan Chand told him at his house in Chebri that Gian Singh was given shoe-beating at Tikkar and had withdrawn from candidature. He cannot give the month and date. He has stated that Gulab Singh, Devi Sharai and Sunder Singh were present at the time; but subsequently he stated that they spoke to him when he was alone. None of the aforesaid three persons was produced. The witness happens to be related to Karam Chand by an exchange marriage, his sister being married to Karam Chand and Karam Chand's to him; but he admitted in cross-examination that Karam Chand had married another wife, while the witness's sister was alive. This would show that the witness is not well inclined towards Karam Chand inspite of relationship. The witness belongs to Chebri to which village the present petitioner also belongs. The witness does not name Sital Singh. P.W. 13 is the only witness who practically corroborates the allegation in clause 9, as he says that Karam Chand said at Arhal two or three days before polling that Gian Singh was shoe-beaten at Tikkar, that he left his horse and fled away and that he withdrew from candidature. This witness P.W. 13, however, is a maternal uncle of the original petitioner Gian Singh and worked as his messenger during elections and is therefore highly interested. Again, he has only named Karam Chand and he too does not name Kahan Chand or Sital Singh.

We, therefore, find that the allegation is not proved by any satisfactory evidence. The petitioner's counsel, in the course of his arguments, while referring to Karam Chand, Kahan Chand and Sital Singh under the head of assistance from Government servants, did not rely on the matter of alleged false statement, nor did he refer to sub-section (5) of section 123 R.P.A. On the other side, the aforesaid three persons Karam Chand Chauhan, Sital Singh and Kahan Chand have denied having made any such allegation or spread any such rumour: they are R.W. 15, R.W. 20 and R.W. 31 respectively. Shadi Ram R.W. 28 and some other witnesses for the respondent have also stated that no such allegation was made as is referred to in clause 9 of List D.

Clause (c) of paragraph 5 of the petition runs thus:—

"The respondent No. 1 distributed money to his voters personally or through his agents or by other persons with the connivance of the respondent No. 1 or his agents in order to influence their votes. Full particulars of these corrupt practices are mentioned in the List marked as C, which may be read as a part of this petition".

This allegation has reference to sub-section (1) of section 123. The petitioner's counsel did not lay stress on this allegation. He mentioned it, in passing, with reference to the statements of Shri Gian Singh P.W. 10. Shri Gian Singh who presented the petition, stated as P.W. 10 that he had knowledge only about items

Nos. 1 and 2 of List C and that regarding the remaining 8 items of that List, he had only heard from his polling agents etc. Regarding items 1 and 2 also he can hardly be said to have any personal knowledge as he professes to have. He says that he heard of it from Amar Nath himself, who is said in item No. 1 to have been given Rs. 500 to procure votes for respondent No. 1 and that he also heard of it from Gibson himself, who is said in item No. 2 to have been given Rs. 300 for a similar purpose. Amar Nath as R.W. 13 and Gibson as R.W. 26 have denied that they were given any money and that they told Gian Singh about it. There is no evidence at all with regard to items Nos. 3, 4, 5, 8 and 9. Ghanshyam who is said in item No. 5 to have given Rs. 2 each to voters at Rohru to buy their votes for respondent No. 1 has denied it as R.W. 10. Some meagre evidence was led to the effect that cigarettes were distributed on behalf of respondent No. 1 at an election meeting at Pujarli, referred to in item No. 6, but the evidence was not at all reliable. The allegation was contradicted by witnesses for the respondent. According to item No. 7 a feast was held by the respondent after his success at his home. This also is not proved by any reliable evidence and has been contradicted by witnesses for the respondent. Moreover, it is neither alleged, nor proved, that any promise was made to voters beforehand that in case they voted for respondent No. 1 they would be entertained at a feast in case of his success. In item No. 8 it is alleged that Shri Bhagat Chand (R.W. 16) made Rameshwar Das, respondent No. 3, to stand as a candidate, in order to get votes for the respondent No. 1 who promised to confer benefit on Rameshwar Dass, in case of success. This has not been alleged even by the said defeated candidate Rameshwar Das who appeared as a witness for the petitioner (P.W. 18), nor is there any other evidence about it.

Some evidence was led with regard to item No. 10. The petitioner, however, does not rely on it in the form in which it is given there. It is said there that on 24th October 1951, which was the date of the visit of Rajkumari Amrit Kaur to Arhal, Rs. 150 were given to Shri Bhag Chand, Headmaster of Government High School, Arhal, by respondent No. 3 i.e., by the aforesaid Rameshwar Das candidate (P.W. 18). It is further stated in that item that "this amount was distributed among the school children for giving a grand show in which the voters of the *ilaqa* came in large numbers. In fact, the function in the school was arranged with a view to promote the election of respondent No. 1".

Some evidence has been led to the effect that Pt. Padam Dev respondent No. 1, who accompanied the Rajkumari, gave Rs. 50 to the Headmaster for distribution of sweets among the school children. In the first instance, this evidence hardly deserves any consideration, the same not being in consonance with the allegation. Evidence in this connection, on behalf of the petitioner, was given by Shri Sanam Ram P.W. 24, a defeated candidate and his supporter Ishwar Singh P.W. 1. They do not specify the amount which, according to Shri Gian Singh P.W. 10, who however was not present, was Rs. 50. On behalf of the respondent, he himself (R.W. 33) and the aforesaid Headmaster Shri Bhag Chand (R.W. 17) stated that Rs. 50 were given by a Sikh gentleman, who accompanied the Rajkumari, on her behalf. According to respondent No. 1, he was Personal Assistant or Personal Secretary of the Rajkumari. Similar is the statement of Shri Rajinder Singh, who was the Chief Organizer on behalf of the Himachal Congress in connection with the elections and who was called as a witness for the petitioner (P.W. 22): he named that gentleman to be S. Balwant Singh. In any case, this could not be said to be bribery, which would fall under sub-section (1) of section 123, as no money is said to have been given to any candidate or to any voters etc.

Some witnesses for the petitioner stated that on the aforesaid occasion the Rajkumari and, according to some, even Pt. Padam Dev told the audience at the meeting at Arhal that new Post Offices and Hospitals would be opened in Himachal Pradesh and that the Branch Post Office at Rohru would be made a Sub Post Officer. This allegation is contradicted by the witnesses for the respondent. We find that the allegation is not satisfactorily proved. Moreover, this would not amount to any corrupt practice of bribery etc. It is in evidence that demands had been made by the public since long for raising the status of the Post Office at Rohru and that this was ultimately done. Pt. Padam Dev however had no influence in the matter of Post Offices.

We find that the alleged corrupt practice mentioned in clause (c) of paragraph 5 of the petition and in List C is not proved.

Clause (d) of paragraph 5 of the petition runs thus:—

"The respondent No. 1 exercised either himself or through his agents or other persons, undue influence upon the voters and thereby interfered directly as well as indirectly with the exercise of their electoral rights. This undue influence also took the form of "spiritual undue influence".

Full particulars of the corrupt practice mentioned in this sub para. are given in the List marked as 'D' which is attached with this petition and which may be read as a part of it".

- The above allegation about undue influence was not relied on and was not even referred to by the petitioner's counsel in his arguments. We might, however, briefly notice the evidence led in this behalf.

List 'D' contains nine items, the first two of which refer to alleged "spiritual undue influence", it being averred that voters were made to take oaths at temples that they would vote for respondent No. 1. No reliable evidence was produced by the petitioner in support of this allegation. In item No. 1, the name of the place is not mentioned. The allegations have been controverted by witnesses for the respondent. Gian Chand R.W. 27 belongs to Kalgaon where the meeting referred to in item No. 2 of List 'D' is alleged to have taken place. Gian Chand has denied that any oaths were administered there by "kashpani", as alleged in that item.

The remaining 7 items in List 'D' relate primarily to alleged assistance procured from Government servants and have been relied on in that connection and therefore would be dealt with in their proper places.

Sunju Kohli P.W. 6 stated that Pt. Padam Dev who formed a member of the party of Rajkumari Amrit Kaur, exhorted people, about 2½ miles from Khadrala, to vote for Congress, adding that they had been sent by Government and that those who would not vote for Congress would be considered to be disloyal to Government. Daulat Ram P.W. 21 also refers to what is alleged to have happened about 2 or 2½ miles from Khadrala. He says that the Rajkumari and the respondent asked people to vote for Congress, as there would be Congress Raj. No such allegations were made in List 'D'. According to the witnesses for the respondent no speeches were made about 2½ miles from Khadrala. It was reserved for Shri Sanam Ram P.W. 24, a defeated candidate, to allege what no other witness has said that at the meeting at Arhal school the Rajkumari even threatened to stop free supply of milk to school children, if people would not vote for Congress; and that she also stated that they had been sent by Pt. Jawahar Lal Nehru. Sanam Ram is married to a niece of the respondent but his sister is married to the petitioner Pt. Satya Dev, and Pt. Satya Dev's sister is married to the witness's brother. He admitted that he had been working with Pt. Satya Dev petitioner politically from the start. The aforesaid allegations are not contained in the List 'D' and are inherently improbab'e. We, therefore, unhesitatingly reject the same.

Nothing worth consideration is left under this head. We find that the allegation of undue influence is also not proved.

Clause (e) of paragraph 5 of the petition reads thus:—

"The respondent No. 1 incurred or authorized expenditure in contravention of the Representation of the People Act 1951 and the rules made thereunder. Full particulars of these corrupt practices are mentioned in the List marked as 'E' attached with this petition which may be read as a part of it".

List 'E' reads thus:—

"Regarding the facts relating to this List, the List relating to the falsity of return of election expenses marked as 'G' may be seen. The petitioner contends that the expenses incurred by respondent No. 1 at his election exceeded much more than the prescribed limit".

By making the aforesaid allegation in clause (e) of paragraph 5 of the petition, the petitioner sought to allege a major corrupt practice contained in sub-section (7) of section 123. Nothing whatsoever was however shown under this head beyond the alleged bribes of money etc. which have been already dealt with and held to be not proved. This clause and the matter thereof were not referred to in the arguments of the petitioner's counsel, who however did deal with the alleged falsity of the respondent's return of election expenses, which forms the subject-matter of clause (g) of paragraph 5 of the petition and of issue No. 2, under which the same would be dealt with. Here it is found that the allegation made in clause (e) above is also not established.

Clause (f) of paragraph 5 of the petition remains to be dealt with under issue No. 1. It relates to alleged obtaining assistance of Government servants. Lengthy evidence was led by the parties in connection with this matter and this was one of the three or rather two, matters round which the arguments of the parties' counsel mostly centred. This will be dealt with later.

**Issue No. 2.**—Now we pass on to issue No. 2, under which the petitioner is to show whether the return of election expenses filed by respondent No. 1 is false in material particulars and is not in accordance with law. It is not questioned that

the return was filed in time and was accepted by the authority concerned. The allegation, if proved, would however constitute a minor corrupt practice under sub-section (4) of section 124. The allegation in this behalf was contained in clause (g) of paragraph 5 of the petition, and its particulars are said to be given in List 'G'.

List 'G' consists of 15 items and we shall deal with them briefly. No. 1 is general. No. 2 says that the respondent went to Delhi on 9th September 1951 or 10th September 1951 but the expenses have not been shown. No. 4 also refers to his going to Delhi in the first week of October. It has, however, not been shown that these journeys had anything to do with his election campaign. The respondent as R.W. 33 has stated that he was called to Delhi for consultations, regarding Congress candidates, with All-India Congress Committee meaning the Central Parliamentary Board, In his capacity as President of the Himachal Pradesh Congress Committee and also as Chairman of the Himachal Pradesh Election Committee. Delhi was not in the constituency. The above statement of the respondent was supported by Shri Jai Chand, Secretary of the Himachal Pradesh Congress Committee, who was called by the petitioner as his own witness (P.W. 27). Shri Jai Chand also filed accounts which show that the respondent was paid his travelling allowance etc by the H. P. Congress Committee for his visits to Delhi. These expenses could not have been shown in the return of his election expenses. Item No. 3 says that the respondent made journeys from Simla to Rohru etc. from 20th September 1951 to 26th September 1951 but the expenses are not shown. No proof was given by the petitioner. The respondent stated as R.W. 33 that once he travelled in the car of Shri Mathura Parshad Sinha M.P. and on another occasion in the car of Pt. Mangal Dev, both of whom had come to Himachal on behalf of the All India Congress Committee. It was stated by the petitioner himself that the bus fare from Simla to Narkanda, the terminus of the bus journey, was Rs. 5/11/- . Even if, as is alleged, the respondent went to Rohru three or four times, there was no difficulty for him to include the petty bus expenses, if he had incurred them, in his return, which shows a total expense of Rs. 524/15/- only, while, under the rules he could have incurred expenditure up to Rs. 2,000. Item No. 5 says that the respondent went from Simla to Dodra Kuar in August 1951, that the pony on which he rode died; that he paid its price to the owner Thakur Amin Chand but did not show any expenditure in the return. As was stated by the respondent, his electioneering tour did not start in August, but some time after his nomination papers were accepted, the date of the acceptance being 17th October 1951. Shrimati Subhadra Devi, wife of the aforesaid Thakur Amin Chand, stated as R.W. 30 that no price of the pony was taken from the respondent, and therefore none need have been shown in the return. Item No. 6 also relates to the same journey. Item No. 7 says that fee was paid to Shri Shankar Nath Advocate and Shri Rajinder Singh, Pleader, in connection with the scrutiny of the nomination papers but the same was not shown. It was further stated that fee was paid to two other Advocates for examining the return of election expenses and the same was also not shown. There is, however, no proof at all that any such fees were paid. The respondent denied the same and stated that he did not engage any lawyer regarding scrutiny of nomination papers and his return was filled up by the aforesaid Shri Rajinder Singh, whom he did not pay anything for the same. Shri Rajinder Singh was a witness for the petitioner himself (P.W. 22). He has not supported the allegation of the petitioner. Item No. 8 says that the respondent has not shown Rs. 75 which he paid to the Congress Committee for the Congress ticket. There is, however, no proof at all that he incurred any such expense. He has stated that he never applied for the Congress ticket and that Rs. 75 was to be paid if an application was made, which was not the case. He has stated that he was requested by the Congress to stand and he complied with that request, without having made any application. In this, he is supported by the aforesaid Shri Jai Chand (P.W. 27) Secretary of H.P.C.C. Item No. 9 relates to the tour by Rajkumari Amrit Kaur. There is no proof that the respondent incurred any expense in connection with the same. The respondent has denied it. In item No. 10 various sums are alleged to have been paid by the respondent to his various polling agents. There is no proof at all of any of these. The respondent denied that he paid anything to his agents. Item No. 11 says that receipts and vouchers filed are no receipts in the eye of law. We, however, do not find any substantial defect. Proper bills and receipts of Kailash Printers Simla have been filed. Rs. 228 were spent by the aforesaid Shri Rajinder Singh (P.W. 22) on behalf of the respondent. Its account was rendered by Shri Rajinder and the same is with the return. Rajinder Singh stated that he got the money from the respondent. The account consists of bus fares of himself and his companions, who went to work for the respondent, and expenses of meals and tea. He was asked as to why receipts regarding meals and tea were not filed and he stated that the hotel keepers of that side do not give cash memos. In fact, they are petty shop-keepers. It has been argued as to why the receipts for the bus fares were not filed. This question

should have been put to Rajinder Singh, who might have explained it. Item No. 14 also relates to the aforesaid sum of Rs. 228. Item No. 13 says that a number of pamphlets and posters were printed by respondent No. 1. No less than Rs. 273/8/- have been included in the return on that account. It has not been shown that the respondent incurred a larger expense. It is in evidence that the posters etc. which the Congress Committee issued were general, in favour of Congress candidates, and not in favour of the respondent alone. In any case, the expenditure in connection therewith was borne by the Committee. Item No. 14 says that the respondent incurred the expenditure of his workers for keeping them in the Coronation Hotel. There is no proof of this at all. Item No. 15, which is the last, is general, and is to the effect that regular books of account were not kept and the expenditure really incurred was more than Rs. 2,000. There is no substance in this allegation also. The respondent produced two copy-books of his account.

Emphasis was laid on the issuing, by the respondent, of two cheques for Rs. 5,000 and Rs. 2,000 respectively as President of the Himachal Pradesh Congress Committee. These are not referred to in any of the 15 items of List 'G'. The counterfoils of the cheques which were got proved by the statement of the respondent himself show on what account the cheques were drawn and the respondent has also explained the matter. The cheque for Rs. 2,000 was drawn by the respondent in favour of self on 18th October 1951. As, however, was recorded by him on the back of the counterfoil, this was on account of salary of the employees and for payment of bills etc. The amount was handed over to the then Secretary of the Congress Committee named Sainu Ram Verma who acknowledged it on the back of the counterfoil. There is no proof that this amount was connected with the election expenses of the respondent; nor was the expense incurred by the respondent. The cheque for Rs. 5,000 favouring Shri Rajinder Singh as Chief Organizer Himachal Congress is dated 22nd October 1951. The counterfoil shows it to be "on account of publicity and office expenditure". Shri Rajinder Singh, called as a witness by the petitioner, was not questioned about it. It has not been shown that any part of this expenditure was incurred by the respondent for his election. If the Congress Committee spent money in the interests of the Congress party to help candidates generally, the respondent need not have shown the same in his return.

Gian Chand R.W. 27 and Shri Bhagat Chand R.W. 16 said that a few Congress workers went to Rohru and stayed at a hotel. It was asked why that expenditure is not shown in the return. Shri Bhagat Chand explained that the workers went to do propaganda generally for Congress candidates including himself: he stood from the Rajgarh constituency. There was another Congress candidate namely Rajkumari Amrit Kaur, who stood for the House of People. The respondent as R.W. 33 stated that there was also Bahadur Chand from Chini constituency. All these stood from Mahasu district of Himachal Pradesh. The respondent said that he did not spend anything in connection with the visit of the said workers. This being so, the same need not have figured in his return. Reference was also made to a meeting of the Rohru Congress Committee at which the names of the Congress candidates were proposed including that of the respondent. This appears to have come off in August. The respondent denied that he was present. Even otherwise, this could not be called an expenditure in connection with his election. The respondent stated, as has been noticed already, that he never applied for a Congress ticket. Nothing else remains to be noticed in connection with this issue. The petitioner has failed to prove that the return of election expenses filed by the respondent is false in material particulars and is not in accordance with law.

We, therefore, find on this issue No. 2 also against the petitioner.

Issue No. 4.—Para (a) of this issue is this:—

"Was respondent No. 1 disqualified for standing as a candidate at the election for reasons alleged in paragraph 7; if so, what is its effect?

Paragraph 7 of the petition says that Pt. Padam Dev was disqualified for standing as a candidate "because at the time of his nomination he was a contractor, interested in a contract for supply of Ayurvedic medicines from his Pharmacy styled as "Simla Ayurvedic Pharmacy" as well as from other sources to the Himachal Pradesh Government as well as to the Government of India.....". Reference is expressly made in the paragraph to section 7(d) of the Representation of the People Act, 1951, under which the disqualification was alleged to have been incurred. In paragraph 7 of the written statement, respondent No. 1 denied that he was disqualified, and he also denied that he was a contractor to Government for supply of medicines. He further pleaded that section 7(d) of R.P.A. did not apply at all to his case.

The present petitioner had applied for amendment as regards the name of the Pharmacy of the respondent. He said that the name "Simla Ayurvedic Pharmacy" was wrongly given as the name of the respondent's Pharmacy in the petition. He

said that the correct name was "D.A.V. Pharmacy" and prayed that an amendment to that effect be allowed to be made in the petition. The prayer was disallowed but he was allowed to lead evidence as to what was the name of the respondent's Pharmacy. It is now common ground that the name was "D.A.V. Pharmacy" and this matter therefore need not detain us any further.

The first important question in this connection is whether section 7 of R.P.A. applies to the case. When the Representation of the People Act, 1951, was enacted, there were no legislatures in Part C States, such as Himachal Pradesh is. The aforesaid Act received the assent of the President on 18th July 1951. It is Act No. XLIII of 1951. In September, the Government of Part C States Act, No. XLIX of 1951 was promulgated. It received the assent of the President on 6th September 1951. Section 8 of the Government of Part C States Act is headed "Elections to the Legislative Assembly". It lays down: "The provisions of Part I and Parts III to XI of the Representation of the People Act, 1951 (XLIII of 1951) and of any rules and orders made thereunder for the time being in force, shall apply in relation to an election to the Legislative Assembly of a State, as they apply in relation to an election to the Legislative Assembly of a Part A State, subject to such modifications as the President may, after consultation with the Election Commission, by an order direct". This section expressly excludes the application of Part II of R.P.A. Section 7 of R.P.A. under which the respondent is alleged to have been disqualified falls in Part II. On page 47 of Doabia's Law of Elections and Election Petitions (1952) in paragraph 82 it is observed as follows:—

"It is important to note that Part II of R.P.A., 1951, is not applicable to the membership of Part C States Legislative Assemblies and consequently its section 7 and other sections in this Part cannot be considered, while determining the qualifications or disqualifications for such membership".

The petitioner's counsel referred to section 17 of the Government of Part C States Act, which is headed "Disqualifications for membership". It reads thus:—

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of a State, if he is for the time being disqualified for being chosen as, and for being, a member of either House of Parliament under any of the provisions of Article 102".

Part (1) of Article 102 of the Constitution, which deals with "Disqualifications for membership", says that "a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament" and then follow five clauses (a) to (e). We are not concerned with clauses (a) to (d) here. Clause (e) reads thus:—

"If he is so disqualified by or under any law made by Parliament".

It is argued on behalf of the petitioner that this clause makes section 7 of R.P.A. applicable. We do not agree with this contention. In "The Interpretation of Statutes" by Maxwell (1946 Edition), on page 163, under the heading "Repugnancy", we find the following observation:—

"An author must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it".

Again, on the same page it is observed:—

"It cannot be assumed that Parliament has given with one hand what it has taken away with another".

As has been seen, Part II of R.P.A. was expressly excluded from application to Part C States by section 8 of the Government of Part C States Act. This express exclusion clearly indicates the intention of the Legislature. If it be assumed, as the petitioner's counsel has asked us to do, that by means of section 17 of the same Act, the Parliament meant to re-impose the said section 7 through Article 102 (1)(e), it will amount to this, as is observed in Maxwell, that Parliament was taking away by one hand what it had given with the other. It was also observed in A.I.R. 1950 Bombay 6 that a "court as far as possible must reconcile the different sections of the Act in order to carry out the object of the Legislature". There the Act in question was the Income Tax Act. The petitioner's counsel referred to page 166, (?165) of Maxwell where it is observed: "If the two sections are repugnant the known rule is that the last must prevail". But the counsel for both the parties themselves observed that there was no repugnancy in the two sections.

The petitioner's counsel further brought to our notice a notification of the Election Commission published in the Gazette of India Extraordinary, Part I, Section 1, dated 6th March 1952 (Exh.P.W.24/B) by which certain candidates of the Himachal Assembly were disqualified on account of their having failed to file returns of their election expenses. In the said notification, besides section 143, section 7(c), of R.P.A. is also cited for disqualifying the candidates. From this it was argued that in the opinion of the Election Commission, section 7 of R.P.A. did apply to Part C States. The counsel for the respondent thought that there was a stereotyped form in the office of the Election Commission for use with regard to all the States, whether of Part A, B or C. It was further contended on behalf of the respondent that it was not clear whether the Election Commission had applied its mind to the matter of the application of section 7 to Part C States. It was further submitted that the Tribunal is not bound, by the notification, in the matter under dispute, even if it be assumed that it expressed the opinion of the Election Commission and that it is for the Tribunal to interpret the Acts. There is force in this argument. The respondent's counsel showed to us, in the course of his arguments, an Order of Adaptations promulgated by the President under the aforesaid section 8 of the Government of Part C States Act on the very date on which the assent of the President was given to the Act, namely 6th September 1951 and the same also showed that Part II of R.P.A. did not apply to Part C States. After the above discussion we hold that Part II of the Representation of the People Act, 1951, does not apply to Part C States and consequently section 7 of R.P.A., under which the respondent is alleged to have been disqualified, does not apply in this case, because the said section falls within the excluded Part II.

Assuming, for the sake of argument, that section 7(d) of R.P.A. applies to the present case, we have to see whether, as is alleged in paragraph 7 of the petition, "at the time of his nomination he (i.e. the respondent) was a contractor, interested in a contract for the supply of Ayurvedic medicines" to the Government. It is not disputed that the crucial date for determining disqualification was the date which was fixed for filing of nomination papers, which in this case was 12th October 1951. As has been seen, paragraph 7 of the petition itself says "at the time of his nomination". The present petitioner filed further particulars regarding the aforesaid paragraph 7 on 25th November 1952. There also in paragraph 2 he said: "That on the date of the nominations for the election to the Himachal Pradesh Legislative Assembly, Shri Padam Dev was supplying Ayurvedic medicines....". In Election Petition No. 92 of 1952 the Indore Election Tribunal observed on page 1011 of the Gazette of India Extraordinary, Part II Section 3, 1st April 1953 "that the material date for consideration of the validity of the nomination paper is that of the nomination.....". In Election Petition No. 67 of 1952, the Bangalore Election Tribunal also observed on page 934 of the Gazette of India Extraordinary of 28th March 1952 that "a candidate should not have incurred any disqualification for being chosen as a member on the date of his nomination and that is the material point". Further, under the law, it has to be shown that there was a subsisting contract on the date of the nomination. In the Gazette of India Extraordinary, Part II, Section 3, dated 19th December 1952, the Assam Election Tribunal observed in Election Petition No. 149 of 1952 on page 1005 that what was to be shown was "that at the time of the nomination the contract in question was, in fact, subsisting in law".

It may be noted that there was no direct or express contract between the respondent and the Government. In the further particulars filed by the petitioner on 25th November 1952 he did not even use the word "contract" anywhere, although the word had been used in paragraph 7 of the petition. In the further particulars he stated that the respondent "was supplying Ayurvedic medicines and goods to the Himachal Pradesh Government". The system obtaining was this. The Director of Health Services, or more often a District Medical Officer, invited quotations from various firms including the D.A.V. Pharmacy, Simla, which was the firm of the respondent. Several firms of different places were registered with the Himachal Pradesh Government for supply of medicines. In one list 18 such firms are mentioned and in another 12. It is admitted by the respondent that his aforesaid firm, which was at first an agency, and later a branch, of the D.A.V. Pharmacy of which the Head Office, before the partition, was at Lahore, and after the partition, at Amritsar, was registered with the Himachal Pradesh Government as one of the approved firms for supplying Ayurvedic medicines for dispensaries in Himachal Pradesh. When quotations were invited, the various firms, of course if they so desired, submitted quotations. In some official letters, the words used are that the firms should quote minimum rates acceptable to them. Of course, medicines were specified in the official letters and quotations were invited regarding prices which the various firms would charge for the medicines. When the firms submitted their quotations of prices the office of the D.H.S., or, more often, D.M.O., would select medicines and firms and would place orders for different medicines with different firms and it was up to those firms

to supply all or any of the medicines indented. This would not amount to a contract in the ordinary sense of the term. The petitioner's counsel, however, would infer contracts from the above dealings.

According to the petitioner's counsel, when a firm submitted quotations, it amounted to an offer and when the Government placed an order, it amounted to acceptance of that offer and constituted a contract. According to the respondent's counsel, if the aforesaid correspondence at all constituted a contract, the submission of quotations amounted to an invitation for offer, the order placed by the Government amounted to an offer and if any firm chose to supply goods or convey acceptance, that would constitute a contract.

By way of analogy, reference was made by the respondent's counsel to Indian Case 325, where it was held that "a catalogue of goods for sale is not a series of offers but only an invitation for offers". It was further held in that case that when the plaintiff, on seeing the catalogue placed an order, he made the proposal and the defendant accepted it, when he complied with the proposal. Similar view was expressed in A.I.R. 1922 Lahore 100. In A.I.R. 1942 Privy Council 6, a party ascertained rates of interest from a Bank for deposits and the Bank sent quotations and the party filled up the form and invested money. It was held that "the Bank's letter with quotations was not an offer but only a quotation of business terms. The contract was made by the offer by the party in the opening form accepted by the Bank by the issue of the deposit receipt". This supports the view taken by the respondent's counsel in this case. The petitioner's counsel cited A.I.R. 1936 Calcutta 87 in which it was held that "a letter communicating willingness to sell certain property for a certain sum in reply to a letter inquiring whether the property is to be sold amounts to an offer or proposal within the meaning of section 2 and is not merely an invitation to an offer". This ruling does not seem to apply appropriately to the system detailed above.

Further, section 7(d) of R.P.A. applies to executory contracts. In the Indian Election Law by Sarin and Pandit it is thus observed on page 277: "Clause (d) of section 7 of the Act of 1951 applies to executory contracts only, and not to contracts completely executed before the election, and where all that remains to be done is for the Government to make payment to the contractor who receives the payment after the election". The English Law in the matter being identical, reference was made by the respondent's counsel to page 22 of "Roger on Elections" Volume II, "Parliamentary Elections and Petitions" (1928 Edition) where also it was observed thus:—"It has been held that the above Act applies to the executory contracts only and not to contracts completely executed before the election and where all that remains to be done is for the Government to pay the money". Exactly the same is given on page 52 of "Parker's Election Agent and Returning Officer" (Fifth Edition). Compare also section 55(1) of the Indian Sale of Goods Act, which lays down: "Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods". Property in the goods passes ordinarily on delivery and if its price is not paid the seller has the right to sue for the price of the goods supplied.

The petitioner's counsel referred to A.I.R. 1931 Calcutta 288, in which, under the Bengal Municipal Act, a contractor, whose bill for work done had not been paid by the Municipal Committee, was held to be disqualified for being a Municipal Commissioner. That ruling does not help in the present case. Apart from the fact that the case was under the Municipal Act, the words of which were different, there the person concerned appears to have been a contractor in the ordinary sense of the term, while the respondent here is not so.

After having discussed the law bearing on the subject, we shall now proceed to examine whether there was any subsisting contract for the supply of medicines on behalf of the respondent on 12th October 1951, which was the date of nomination. It may be mentioned here that according to the respondent he transferred his business to Shrimati Subhadra Devi R.W. 30 in the first week of October and had nothing to do with the business, including the supply of medicines to Government, after the aforesaid time. We shall, however, examine the question whether there was any subsisting contract on the crucial date, ignoring, for the time being, the plea of transfer.

The petition's counsel relied on one instance, each, from three, out of four, districts of Himachal Pradesh, namely Mahasu, Sirmur and Mandi, in his attempt to prove a subsisting contract. Evidence regarding the correspondence and dates etc. has been given principally by three witnesses namely Shri Ram Lubhaya (P.W. 25), Accountant of the office of the District Medical Officer, Mahasu, Shri Phul Chand Gupta (P.W. 17) Auditor, of the Accountant General's office, Simla, and Shri Mithan

Lal, Superintendent, Establishment, Himachal Pradesh, who was formerly Superintendent of the office of the Director of Health Services, Himachal Pradesh and who was examined as a Court witness on the 2nd instant. Supplementary statement of the aforesaid Shri Phul Chand Gupta was recorded on the 2nd instant and of Shri Ram Lubhaya on the 4th. A very large number of documents were filed in Court on behalf of the office of Director, Health Services, and D.M.O. Mahasu etc., at the instance of the petitioner. We shall take up each of the three instances one by one.

In the Mahasu instance, the D.M.O. called for quotations on 25th July 1951, from several firms including the D.A.V. Pharmacy, Simla. Quotations were received before 27th October 1951, the exact date not being ascertainable from the papers available. On 27th October 1951, the D.H.S. wrote to the D.M.O. to order the medicines and the D.M.O. placed the order on 19th November 1951. Medicines were supplied in December 1951 and January 1952. Payment of Rs. 3,281-11-0 as price of those medicines was made on 18th April 1952 by the aforesaid Ram Lubhaya to Shri Bhup Dev Shastri (P.W. 26) who stated that he was running the business for the aforesaid Shrimati Subhadra Devi (R.W. 30) and that he handed over the money to her; and she supported this. As the order in this case was placed on 19th November 1951, even if, according to the argument of the petitioner's counsel, that were to be taken as acceptance, the contract came into being much later than the date in question namely 12th October 1951. It is common ground that any disqualification incurred subsequently is not within the jurisdiction of an Election Tribunal.

In the case of Sirmur, the D.M.O. placed an order with four firms including the D.A.V. Pharmacy, Simla, on 25th September 1951 for supply of certain medicines. On 24th October 1951, the D.M.O. issued a reminder. On 31st October 1951, Lal Singh, an employee at the D.A.V. Pharmacy, Simla wrote to the D.M.O. that the supply was being arranged. On 27th November 1951, the D.M.O. pressed that the supply be made by the end of the month, adding that otherwise the order should be taken as cancelled. In this connection it was pertinently remarked by the respondent's counsel that if the quotations constituted proposal and the D.M.O.'s order acceptance, the Government need not have said that the order be taken as cancelled but would have claimed damages for a breach of the contract. On 30th November 1951, a telegram was sent to the Civil Surgeon, Nahan, requesting for extending the date for supply up to the 5th December. The telegram also said that delay was due to elections. The telegram purported to have been sent by "Padam Dev". The original telegram is not in Court. It is the copy which was received by the Civil Surgeon. On the same date i.e. 30th November 1951 the aforesaid Lal Singh sent a copy of the telegram by post in confirmation to the said D.M.O., adding that medicines would reach Nahan by the 5th. This copy and the endorsement below it are typed. It is signed by Lal Singh and below his signature within brackets there is typed the name "Padam Dev". It appears from this that the telegram also was given by Lal Singh in the name of Pt. Padam Dev. The medicines appear to have been supplied by 5th December as the bill submitted was dated 6th December. The contract, if any, should be taken to have come into being on 31st October 1951 when Lal Singh conveyed acceptance by writing that the supply was being arranged. This date also is subsequent to the crucial date 12th October 1951. It has not been shown when payment for this supply was made as the relevant receipt has not been found.

Greatest stress was laid by the petitioner's counsel on the Mandi instance. The respondent has admitted that the acknowledgement of receipt of Rs. 395 dated 3rd March 1952 (vide page 2475 of the record) is signed by him. The statement made, and the record produced, by Shri Phul Chand Gupta, Auditor, however, leaves no doubt that the actual payment by the D.M.O. Mandi to the D.A.V. Pharmacy, Simla, in this case, was made in September 1951, as the bill of the D.A.V. Pharmacy for the aforesaid amount was entered in the statement received in the office of the Accountant General, Simla, in September as voucher No. 15 of the Mandi Treasury. There was a remark against it "Receipt not received, will follow". The Auditor stated: "Some receipts are sent promptly by the various departments and others are delayed". It appears that the D.M.O. Mandi insisted on having a receipt of Pt. Padam Dev himself who apparently could not be contacted earlier. The so-called receipt reads thus:—"With reference to your memo No. M-29/25-1233, dated the 23rd February 1952, receipt of Rs. 395 (three hundred ninety five) only regarding the payment of our bill in full is hereby acknowledged". This receipt is shown as having been written on 1st March 1952, but was signed by Pt. Padam Dev on 3rd March 1952, which date he gave along with his signature. It therefore appears to be only an acknowledgement of the money which was received in September 1951. According to the usual procedure, the D.M.O. Mandi appears to have withdrawn the amount from the Mandi Treasury on the strength of the respondent's bill and

remitted the amount from Mandi to him at Simla by a cheque or a draft and added: "Receipt not received, will follow". Thus, in this case also there was no subsisting contract on the date of nomination. Assuming that payment was made in March 1952, still there was no executory contract: the bill, having reached D.M.O. Mandi in September 1951, left no doubt that medicines had been supplied by them. We have already referred to Roger and Parker etc. to the effect that the mere fact that payment was yet to be made is immaterial and we have held A.I.R. 1931 Calcutta 288 to be no guide in this case. This finishes the only three instances specifically relied on by the petitioner's counsel in his arguments.

There remains the question of the alleged transfer of the business of D.A.V. Pharmacy, Simla, by the respondent to Shrimati Subhadra Devi, R.W. 30, in the first week of October, 1951. Evidence in that connection was given by the respondent himself R.W. 33, the aforesaid lady, R.W. 30, and Shri Satya Prakash, M.A., Headmaster, D.A.V. High School, Simla, R.W. 14. The alleged transfer was supported by two witnesses summoned by the petitioner himself, namely Pt. Bhu Dev Shastri, Ayurved Shiromani, P.W. 26, and to some extent by Shri Jai Chand, P.W. 27, Secretary of the Himachal Pradesh Congress Committee. We find it unnecessary to examine the evidence about the alleged transfer, in view of our findings recorded above, namely that section 7 of R.P.A. does not apply in the present case and, assuming that it does, there was no subsisting contract on the date of nomination i.e. 12th October 1951. Therefore, transfer or no transfer, the respondent was not disqualified for standing as a candidate for the Himachal Pradesh Legislative Assembly.

Our finding, therefore, on part (a) of issue No. 4 is against the petitioner. Parts (b) and (c) of the said issue no longer arise. Moreover, the matter of part (b) is outside the jurisdiction of the Tribunal.

*Issue No. 1 (again).*

Only one portion remains to be examined under issue No. 1. It forms the subject-matter of clause (f) of paragraph 5 of the petition. It runs thus:—

"The respondent No. 1 or his agents or other persons with the connivance of respondent No. 1 or his agents obtained or procured or abetted or attempted to procure the assistance for the furtherance of the prospects of the election of the respondent No. 1, from a large number of persons serving under the Government. Full particulars of the corrupt practices mentioned in this sub para are given in the List marked as 'F' attached with this petition, which may be read as a part of this petition".

List 'F', however, reads thus:—

"Regarding the facts to be mentioned in this list, the petitioner relies upon the particulars and facts mentioned in the List 'D' which at the same time constitutes the corrupt practice of getting help etc., from Government servants as provided in section 123 of the Representation of the People Act, 1951".

List 'D' consists of nine items. Of these Nos. 1 and 2 relate to alleged spiritual undue influence and as such they have been dealt with. There is no mention of any Government servant in item No. 2. In item No. 1, however, there is a mention of Amar Singh Zaildar and this would be examined. The remaining 7 items do relate to the alleged assistance by Government servants and would be gone into.

The matter falls under sub-section (8) of section 123 of R.P.A. The said sub-section runs thus:—

"The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person".

Before proceeding to assess the proof of the alleged corrupt practice we shall notice generally what the law expects in this connection. Section 83 of R.P.A. says in sub-section (1) that "an Election Petition shall contain a concise statement of the material facts on which the petitioner relies.... . . .". And its sub-section (2), runs thus:—

"The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice."

The word used in sub-section (2) is "shall", which shows that the furnishing of full particulars in a list is mandatory. In Pt. Nanak Chand's Law of Elections (Edition 1951), this matter is discussed on pages 380—383. There it is given that the furnishing of full particulars is required "with a view to give the earliest possible notice of the charges relied upon by the petitioner to the respondent and to prevent his being harassed by fresh matter being introduced at later stages". It is further observed: "The allegation of corrupt practice is a quasi-criminal charge and the respondent should know the exact charge at the earliest possible moment". It is also observed there that if particulars are not given, the relevant paragraphs in the petition should be struck off. Authorities are cited under the aforesaid observations. It is also pointed out that in an Election Case of Amritsar City, (2 Hammond's Indian Election Petitions 17), "the commissioner opined that it would be a dangerous precedent to encourage any laxity with regard to this rule". It is further observed that "evidence should be confined to corrupt practices of which particulars have been filed". With reference to another case (3 H.I.E.P. at 241, 242) it is observed that "where evidence was led by the petitioner on various charges which had not been included in the list of the particulars and the counsel for the respondent raised an objection as to this, the Commissioners upheld the objection and refused to consider the evidence tendered on behalf of the petitioner on such charges". On page 382 reference is made to a case where the Commissioners dismissed a petition on the ground of failure to give material facts and particulars.

In the *Gazette of India Extraordinary*, dated 20th January, 1953, there is reported a decision of Gorakhpur Election Tribunal on pages 172—178 in Election Petition No. 269 of 1952. In this case lists of particulars were filed with the petition, but the lists were not verified as required by sub-section (2) of section 83. Subsequently, verified lists were submitted afresh. This was, however, done after the limitation for submission of the petition was over. The verified lists therefore were not accepted and the petition itself was dismissed on the ground that it did not fulfil the requirements of sub-section (2) of section 83, which were mandatory.

Now we shall proceed to examine the evidence. It would be better to take up the case of each person separately.

**Raghbir Das Zaildar.**—He is referred to only in paragraph No. 7 of list 'D', where it is stated that on 19th November 1951 he arranged a meeting at village Dalgaon and there asked the voters to vote for respondent No. 1 and other Congress candidate. He is also alleged to have told the voters that he was instructed by the Government to do so.

The only witness who has given evidence supporting the allegation in paragraph No 7 of the list is a defeated candidate Sanam Ram (P.W. 24), admittedly a political ally of the present petitioner from the start of their political activities. Surat Singh (P.W. 3)) and Sanju (P.W. 8) alleged that the Zaildar canvassed for the respondent at Karalish, while the original petitioner Gian Singh P.W. 10 deposed similarly regarding Rohru. The aforesaid Sanam Ram also stated about village Pujarli. All this evidence is inadmissible and cannot be considered, because no village other than Dalgaon is referred to in the list. On pages 433-434 of "Indian Election Cases" (1935-51) by Sen and Poddar a similar case is referred to and there it was held "that the petitioner cannot be allowed to establish the commission of the corrupt practice . . . . at any place not mentioned in the petition or in the list appended to it". Consequently, evidence produced regarding 13 villages was rejected. Here the evidence in support of the particular instance cited in the list being that of one interested witness only, it is hereby found that the charge of obtaining assistance from Raghbir Das Zaildar is not proved. Goklanand, also a witness for the petitioner (P.W. 9) stated that he never saw the said Zaildar doing any propaganda. The Zaildar himself as respondent's witness No. 1 and several other witnesses for the respondent controverted the allegation of the petitioner in this behalf. Raghbir Das Zaildar was confronted with a post card (Exh. P.A.) of 23rd September 1951 which he wrote to Shri Gian Singh in reply. The same does not help the petitioner in any way. There in the Zaildar assessed chances of various candidates and considered that Sanam Ram might succeed. The letter does not show that the Zaildar was holding any candidate, much less the respondent No. I.

**Amar Singh Zaildar.**—He is mentioned in paragraph 1 and paragraph 6 of list 'D'. Paragraph 1 contains an allegation of a meeting having been convened by this Zaildar and his son Padam Singh at the temple of Kul Devta, where voters were administered oaths in order to vote for the respondent. This matter has already been dealt with under the heading of undue influence, where it was pointed out that no evidence was led by the petitioner in support of this allegation, while several witnesses for the respondent including Amar Singh Zaildar (R.W. 3) controverted it. Paragraph No. 6 is to the effect that Lombardars had been ordered to arrange

reception for the Rajkumari as well as respondent No. 1 and bands were arranged from temples. Further it says: "Shri Dhan Sukh Lambardar of Kui Ghori was reprimanded for his negligence in not arranging a good reception by Zaildar Amar Singh. He was warned that unless he helped the Congress candidates in the best possible manner he would be dismissed". There is only the evidence of Dhan Sukh Lambardar himself (P.W. 16) in this connection, and even he does not support the material allegation made in the last sentence quoted above. He only stated that three days after the Rajkumari went away, Amar Singh Zaildar asked him why he did not arrange for a band and the witness replied that he received no instructions, on which the witness was told not to be negligent in future. Even if the witness is believed, this related only to the reception of the Rajkumari, and the witness himself does not make any reference to the matter of election in connection with her visit. He does not say, as is alleged in the list, that he was warned that unless he helped the Congress candidates he would be dismissed. In cross-examination, the witness stated that none else was present when the Zaildar spoke to him and that he himself also did not speak of the matter to any one. He also stated that he supported Sanam Ram. We find that the allegation contained in paragraph 6 of the list is not proved. Amar Singh Zaildar (R.W. 3) denied the allegation.

Two other witnesses namely Sanju Kohli (P.W. 6) and the aforesaid Sanam Ram (P.W. 24) spoke of the Zaildar's propaganda at other places. On the strength of the authorities referred to already, we hold that evidence to be inadmissible, as those other places were not mentioned in the list. Gian Singh, the original petitioner, who was a candidate (P.W. 10) stated that he never saw Amar Singh Zaildar doing any propaganda. The Zaildar was also confronted with a letter of his (Exh. P.D.) of 22nd September 1951 written to Gian Singh in reply. The same also does not help the petitioner. Exh. P.W. 10/A is a complaint which Sanam Ram aforesaid made to the Deputy Commissioner making allegation against Raghbir Das and Amar Singh Zaildars about their having helped Pt. Padam Dev, in the election. This complaint is dated 1st December, 1951, while the result of the election was declared on 30th November, 1951. This related complaint by a defeated candidate has no value. If the allegations were true, Sanam Ram should have made the complaint during the pre-election days when the Zaildars are alleged to have been carrying on propaganda for the respondent. Thus the charge regarding Amar Singh Zaildar is also not proved.

*Padam Singh*.—Padam Singh is a son of the aforesaid Zaildar Amar Singh. He was admittedly a polling agent of the respondent. It is true that Amar Singh stated: "Sometimes if there is any urgent work to do and I am ill or otherwise unable to go, Padam Singh goes to do that work". Even so, Padam Singh does not thereby become a *de facto* Zaildar, as it is sought to be made out by the petitioner. It has not been shown that employing Zaildar's son as a polling agent is a corrupt practice. Paragraphs 1 and 8 of list 'D' refer to Padam Singh's having convened meetings etc. for the respondent. The same is immaterial, as Padam Singh was not a Government servant.

*Karam Chand Chauhan*.—He is mentioned in paragraphs 3 and 9 of the list 'D'. It is not denied that he was an employee in an office of Government of India, New Delhi, and was on leave from 1st June 1951 till 20th January, 1952. Shri K. N. Tewari (R.W. 25), who brought the relevant record, showed that the leave was on grounds of illness and was extended from time to time on medical certificates. If the object of Karam Chand's taking leave was to help Pt. Padam Dev, as is alleged, he need not have taken leave for nearly eight months including a sufficient period after the elections. In paragraph 3 of list 'D', the only thing alleged against the said Karam Chand is that he read out a welcome address in honour of the Rajkumari when she visited his village Arhal. The reading of the address is deposed to practically by the aforesaid Sanam Ram (P.W. 24), a defeated candidate, alone. Several witnesses for the respondent have stated that Sanam Ram was not even present at Arhal on the occasion of the Rajkumari's visit and they have further deposed that no address was read out in honour of the Rajkumari by any one. Ishwar Singh (P.W. 1) is a resident of the said village Arhal. He said that Karam Chand and others made arrangements for welcoming the visitors but he did not mention the address. Moreover, the reading of an address in honour of a Cabinet Minister, if the allegation be true, cannot be said to be anything wrong, especially when its contents have not been disclosed and it has not even been alleged that the address had any reference to election matters. Again, it is not shown how is the respondent responsible about it. It is not alleged that the address was read out at the instance of the respondent.

Some evidence, not quite consistent, was given by the aforesaid Sanju Kohli (P.W. 6) and Sunder Singh (P.W. 7) about Karam Chand's having lectured or exhorted people to vote for Congress at Kansa Koti, which was on the way of the

Rajkumari's party from Baghi to Rohru. This evidence cannot be looked into as the matter is not mentioned in the list. Goklanand (P.W. 9) stated that at the meeting of the Rohru Congress Committee in July-August 1951 Karam Chand proposed the name of Pt. Padam Dev as a Congress candidate. This evidence has been refuted by witnesses for the respondent, and being not mentioned in the list cannot be considered. A few other witnesses like Data Ram (P.W. 11) and Joban Singh (P.W. 12) alleged propaganda by Karam Chand in favour of the respondent at some other places. That too is irrelevant. The context of the passages in paragraph 3 of the list would show that the allegation about asking the audience to vote for official candidates such as respondent No. 1 does not relate to Karam Chand, but only to Sital Singh and Kahan Chand. Unfortunately, there is a comma and not a full-stop after the words "Shri Karam Chand Chauhan a Government servant", after which the names of Sital Singh etc. follow. Assuming that the said allegation relates also to Karam Chand, we find that the same is not proved by any evidence worth the name. Even Sanam Ram (P.W. 24) only states of Karam Chand's having read out the address and nothing more. The statement of Gian Singh (P.W. 10), the original petitioner, that Karam Chand did propaganda at Arhal does not refer to the occasion mentioned in the list and even otherwise cannot be relied on. Karam Chand himself has appeared as R.W. 15 and has denied all the allegations made against him, and he is corroborated by several other witnesses for the respondent, for instance Shri Kundan Lal Deshta, a pleader of Rohru (R.W. 11) and Shri Bhag Chand (R.W. 17), Headmaster of the Government High School, Arhal, in the compound of which the meeting on the visit of the Rajkumari was held.

Paragraph 9 of list 'D' relates to the false rumour alleged to have been spread by Karam Chand and others about Gian Singh's having been beaten at Tikkar etc. This has been dealt with already and it has been found that this allegation also is not proved. We, therefore, find that the charge regarding Karam Chand is not established.

*Swatantranand.*—Paragraph 4 of list 'D' says that Swatantranand, a teacher of a Government Primary School at Kupri, who is admittedly a son-in-law of respondent No. 1, did extensive propaganda for the respondent at various places. While some witnesses for the petitioner supported this allegation, a large number of witnesses for the respondent including the said Swatantranand himself (R.W. 24) controvert the allegation. The aforesaid paragraph 4 further says that an official report was made about the said activity of Swatantranand by respondent No. 3 to the superior authorities of the Education Department. No such report has been proved. The respondent No. 3 Rameshwar Das has appeared as a witness for the petitioner (P.W. 18). He neither alleged that any propaganda was done by Swatantranand, nor did he say that he made any report against him. Another rival candidate Sanam Ram (P.W. 24) expressly stated that he did not see Swatantranand doing propaganda for his father-in-law. The counsel for the petitioner did not refer to Swatantranand in the course of his arguments. Consequently, the counsel for the respondent also did not. We find that the charge regarding Swatantranand is not proved.

*Sital Singh and Kahan Chand.*—They are brothers. Sital Singh was an extra-departmental agent of post office at Arhal and Kahan Chand at Rohru. They were performing the functions of Branch Postmasters. Kahan Chand began to work as extra-departmental Sub-Postmaster after the elections. Regarding them the allegations are contained in paragraphs 3 and 9 of list 'D'. Paragraph 3 related to the visit of Rajkumari Amrit Kaur. It stated that Sital Singh and Kahan Chand took part in the propaganda for respondent No. 1 and the Rajkumari and they impressed upon the audience to vote for the official candidates. They are also said to have held out "promises to voters to make efforts to open a sub post office at Rohru.....". The audience mentioned refers to the meeting which took place at Arhal on the visit of the Rajkumari. There is no evidence at all that Kahan Chand and Sital Singh made any speech whatsoever on that occasion. According to the respondent's witnesses, Kahan Chand was not even present. They themselves have also come into the witness box as witnesses for the respondent and have denied the allegations made against them: Sital Singh is R.W. 20 and Kahan Chand is R.W. 31.

Paragraph 9 of list 'D' alleges spreading of a false rumour that the original petitioner Gian Singh was man-handled at Tikkar etc. This rumour is stated in the said paragraph to have been spread by "Karam Chand Chauhan with the connivance of the respondent No. 1 as well as his agents Sital Singh and Kahan Chand Postmasters". This allegation has been dealt with already, and found to be not proved.

Nothing was said about Kahan Chand by the petitioner's counsel in his arguments. He, however, laid stress on the admitted fact that Sital Singh was one of the two polling agents of respondent No. 1 for the polling station Arhal, the other being Shadi Ram R.W. 28. It was vehemently argued that the appointment of Sital Singh as a polling agent was a major corrupt practice under section 123(8). There was, however, no such allegation at all in the list 'D'. It was argued that the words "his agents Sital Singh and Kahan Chand" in paragraph 9 of list 'D' impliedly refer to the matter. We are not prepared to accept this contention. Kahan Chand is not alleged even now to have been an agent of the respondent. Under section 23(2) the petitioner was bound to specifically allege that Sital Singh was appointed by the respondent as his polling agent and should have given the date and place etc., if he sought to rely on it as a corrupt practice. Evidently it is an after-thought to introduce the matter as a corrupt practice. On the basis of the law already cited, this cannot be allowed and the Tribunal cannot go into this matter.

Assuming that this matter can be gone into, let us first see whether Sital Singh was a Government servant. The words used in section 123(8): "person serving under the Government of India or the Government of any State" do not necessarily connote anything different from the common expression "Government servant". While in clause (f) of paragraph 5 of the petition, the petitioner uses the words "persons serving under the Government", in the relevant list 'F' referred to in that clause, he uses the words "Government servants". The expression used in paragraphs 3 and 5 of the relevant list 'D' is also "Government servant".

It is not disputed that Sital Singh and Kahan Chand are what are styled "extra-departmental agents" under Post Office Rules. We shall notice the particular points relating to such persons. The evidence in this connection was given by Shri Ram Farshad Singhal of the General Post Office Simla (R.W. 29) and some Post Office Rules etc. were further referred to in this connection in the course of arguments by the parties' counsel. The same show that extra-departmental agents are appointed from among "school masters, station masters, shop-keepers, land-holders and pensioned servants of Government who have sources of income apart from their allowance for postal work", (*vide* paragraph 284 of Post and Telegraph Manual Volume IV). It is emphasized in the rules in more than one place that "they should possess some independent means of subsistence or should have spare time to earn sufficient income in addition to the allowance", [*vide* paragraph 572 A(3) *ibid*]. In the present case, both Sital Singh and Kahan Chand were school masters. Both seem to have retired. Kahan Chand cultivates land and Sital Singh is salesman of a Co-operative Society, besides their doing Post Office work. Paragraph 4 of the Manual of Appointments and Allowances of officers of the Indian Post and Telegraph Department, Chapter 1, re: classification and status of services lays down that extra-departmental agents, like Pankhapullars, Bahishis, Sweepers, Grass-cutters, cobblers etc. are wholly excluded from the operation of the Civil Services Rules. Paragraph 62 of Circle Orders of the Punjab and North West Frontier Postal Circle, Section VIII, says: "Persons employed as extra-departmental agents have no claim whatever to any permanent appointment or promotion in the department". Memo. No. A116-1/48, dated 20th March 1948 from the Director General, Post and Telegraph, New Delhi, says: "The basic idea of the extra-departmental system is that extra-departmental agents should be employed only when there is not enough work to justify the employment of the departmental staff. It has been decided that generally when work exceeds 5 hours per day, extra-departmental agents should not be employed, and if any are now employed they should be replaced by departmental staff". Shri Singhal (R.W. 29) stated: "Postal Rules relating to leave, gratuity, pay and pension etc. do not apply to them. They are not entitled even to casual leave". He also stated that in case they want to absent themselves temporarily from their duty, they have to make arrangement for a substitute on their own responsibility. In these circumstances, we are inclined to hold that extra-departmental agents like Sital Singh and Kahan Chand are not Government servants or "persons serving under the Government" within the meaning of section 123(8) of R.P.A.

Assuming that Sital Singh was a "person serving under the Government", it has to be seen whether his appointment as a polling agent was "for the furtherance of the prospects of the candidate's election". Nothing has been shown beyond the fact that he was appointed a polling agent: there is no evidence worth the name that he canvassed votes for the respondent. The respondent as R.W. 33, stated that he appointed him as one of his two polling agents in order to identify the voters and prevent personation and that he was only to sit inside the polling booth to assist the polling staff in the aforesaid matter, while Shadi Ram, the other polling agent was to work outside the polling booth. Sital Singh himself (R.W. 20) also denied that he did any canvassing etc. for the respondent. In Petition No. 3 of

1952, the Election Tribunal Jabalpur held thus about a polling agent in that case: "He had no doubt worked as respondent No. 1's polling agent on the date of the polling at Kalar Banki. But in our opinion a polling agent is a person more to assist the work of polling than to work for the candidate in the polling station" (vide page 552 paragraph 27, of the *Gazette of India Extraordinary*, dated 26th February 1953). The petitioner's counsel referred to two decisions of the Patiala Election Tribunal in which they held the appointment of Government servants as polling agents to be a corrupt practice. The decisions were given in Election Petition No. 214 of 1952, vide *Gazette of India* of 5th February 1953, from page 315 and in Election Petition No. 100 of 1952 vide *Gazette* of 21st February 1953, from page 477. In one of the cases the polling agent was an Army officer, who was also a Lambardar and in the other, he was a member of the Debt Conciliation Board. It was alleged by the petitioner that these influential Government servants actively procured votes for the returner candidates. There is no such proof in the present case. We do not regard the said Patiala rulings to be an appropriate guide in the present case. We are inclined to agree with the view of the Jabalpur Tribunal referred to above. It is to be noted that now the ballot is secret and no cross-mark etc. is to be put on a ballot paper, and therefore a polling agent who merely sits with the polling staff to identify voters cannot be said to further the prospects of a candidate's election.

For the aforesaid reasons we hold that assuming Sital Singh to be a Government servant, his appointment as a polling agent, which was not specifically alleged as a corrupt practice, and which is not proved to have been for furtherance of the prospects of the election of the respondent, is not detrimental to the respondent's case.

*Moti Ram and Daulat Ram.*—They are referred to only in paragraph 5 of list 'D', which reads thus:—

"Moti Ram and Daulat Ram of Sharog who were working as postman and packer in the Post Office and were Government servants did extensive propaganda in favour of respondent No. 1, and told the voters that they must vote for the respondent No. 1 who was an official candidate helped by the Government and in case they did not do so they would be severely dealt with. These two persons were the seconder and proposer of the respondent No. 1. Shri Daulat Ram took leave from 15th November 1951 and for some other days also, and came back to his duty long after 23rd November 1951 after helping the respondent No. 1 by making propaganda in his favour and in various other ways".

It is clear that the complaint regarding these two Government servants was that they actively helped the cause of the respondent and did extensive propaganda for him. There is, however, no proof worth the name in support of this allegation. Regarding Moti Ram, a postman, of G.P.O. Simla, there is no such evidence at all. Regarding Daulat Ram, a postal packer attached to G.H.Q. Post Office, Simla, only the original petitioner Gian Singh (P.W. 10) made such an allegation, which cannot be relied on. Moti Ram and Daulat Ram denied the allegation as respondent's witnesses R.W. 18 and R.W. 32, respectively. Some other witnesses for the respondent also stated that these two men did no propaganda. Daulat Ram admitted that he went home on leave for 10 days from 18th or 19th November and added that the reason for his taking leave was that his wife was about to give birth to a baby and a son of his was ill, and that therefore, he only stayed at home.

Great stress was laid in the course of the arguments by the counsel for the petitioner on the fact of Moti Ram's and Daulat Ram's having seconded and proposed nomination papers of the respondent and it was contended that this was *per se* a major corrupt practice enough to declare the election of the respondent to be void. Paragraph 5 of list 'D' which has been reproduced above *in extenso* would show that the petitioner did not specifically rely, as a corrupt practice, on the proposing and seconding of nomination papers of the respondent by Daulat Ram and Moti Ram. If it was desired to rely on the same as a corrupt practice it was incumbent on the petitioner, under section 83(2) of R.P.A., to specify the date and place etc. with respect to the nomination papers; but this was not done. Clearly paragraph 5 complained only about propaganda alleged to have been done by the two men in favour of the respondent No. 1. The sentence: "These two persons were the seconder and proposer of the respondent No. 1" appears to have been introduced only to strengthen the allegation of the alleged propaganda. Obviously, it was not pleaded as a separate and specific act of corrupt practice. Therefore, in view of the law already cited, the matter, as sought to be argued now, cannot be gone into.

We might however briefly examine the matter further. The respondent as R.W. 33 stated that he did not ask these two men to do any propaganda for him or help him in his election in any manner, nor did they do so. He further stated

that he made them sign his nomination papers because he thought that every voter could propose or second a nomination. He added: "I did not find any bar to the same as far as I looked up the law at the time".

There is no decision of any Court, so far, one way or the other, as to whether a Government servant is or is not debarred from signing the nomination paper of a candidate at an election as a proposer or a seconder. It is true that section 123(8) expressly saves only "the giving of vote" by a Government servant. This right of vote being available to him, we have to see whether a Government servant is precluded from signing a nomination paper. Section 33(2) of R.P.A. 1951 lays down: "Any person whose name is registered in the Electoral Roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950), may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more". Section 16 of R.P.A. 1950 enumerates "Disqualifications for registration in an Electoral Roll". Its clause (c) requires that such a person should not be "disqualified from voting under the provisions of any law.....". It is not alleged that Moti Ram and Daulat Ram were disqualified from voting. This right is expressly saved for Government servants under section 123(6) of R.P.A. 1951. Thus, Moti Ram and Daulat Ram were qualified for registration in an Electoral Roll. This is not disputed and they were in fact so registered and only such a person could propose or second a nomination paper. Reading section 123(b) and section 33(2) of R.P.A. 1951, along with section 16(c) of R.P.A. 1950, we are inclined to the view that a Government servant is not necessarily debarred from proposing or seconding a nomination paper, which right, under the law, appears to accrue to every voter; and a Government servant is not debarred from being a voter.

In any case, according to the requirements of sub-section (8) of section 123 it must be proved that the act of proposing or seconding was "for the furtherance of the prospects of the candidate's election". We find that this is not proved. In our opinion, the act of signing the nomination papers was, at least in the present case, only a formal paper affair. These two persons did not even attend at the time of the scrutiny of the nomination papers. It is also not proved that they did any propaganda for the respondent or render him aid in the matter of his election in any other manner whatsoever.

Another argument worth consideration was also advanced by the counsel for the respondent. Pt. Padam Dev filed four nomination papers and all the four were accepted. One of them which is on pages 163 to 166 of the file of nomination papers is not alleged to have been proposed or seconded by any Government servant. As appears from the re-examination of the respondent (R.W. 33) Tina Das seconder was not a Government servant. So, the respondent could contest the election, solely on the strength of the aforesaid nomination paper, which also was accepted. In this view of the matter, the other three nomination papers, one of which was proposed by Daulat Ram and another was seconded by Moti Ram, become superfluous. In this view of the matter also, it cannot be said that the proposing of one nomination paper by Daulat Ram and the seconding of another by Moti Ram, furthered the prospects of the candidate's election.

As the aforesaid acts of proposing and seconding are sought to be brought in as a corrupt practice, we might advantageously refer to the authorities cited by the respondent's counsel as to what is a corrupt practice. On page 392 of "Parliamentary Elections" by A. Norman Schofield (Edition 1950), it is thus observed on the basis of authorities cited there: "To make the doing of an act corrupt it must be done with an evil mind, with the knowledge that it is wrong and with an evil feeling and evil intentions". In "Reports of Indian Election Petitions" Volume I by Jagat Narain (Edition 1930), on page 57 in the Rohtak case in *re: Ch. Govardhan Das Versus Rao Bahadur Ch. Lal Chand*, the Commissioners are reported to have held: "To constitute a corrupt practice it is essential that there should be a corrupt or wicked motive. Mere suspicion of such motive, however strong, cannot take the place of proof".

The circumstances of the present case do not even suggest that the respondent had any evil or corrupt motive in making these two men sign his nomination papers. He got their signatures in their postal quarters and these men did not even attend the office of the Returning Officer. Therefore, this was only a formality and was not meant for furtherance of the prospects of election.

The law contained in sub-section (8) of section 123 is new. Under the old law, taking assistance from a Government servant was not a corrupt practice, unless the same was accompanied by the exercise of undue influence by such a

Government servant and the same materially affected the result of the election. We have already observed that so far there is no decision, one way or the other, on the point under discussion. It is not disputed that an allegation of a corrupt practice in an election petition is like a criminal charge, that the *quantum of proof* required is as it would be in a criminal case, and that the benefit of doubt would go to the respondent and not to the petitioner.

For all these reasons we hold that the act of Daulat Ram and Moti Ram, postal employees in having signed the nomination papers of the respondent would not constitute a corrupt practice under section 123(8). We must repeat that no such corrupt practice was specifically alleged in the petition or in the list and therefore, in the first instance, the Tribunal has no jurisdiction to go into the allegation sought to be made out later.

One thing remains to be noticed with regard to the aforesaid Moti Ram who appeared as R.W. 18. In his cross-examination he chose to say as under:

"Pt. Padam Dev did ask me to help him in his election, but I excused saying that as a Government servant I could not do so. He also asked me to write letters to my relations etc. to give votes to him, but I said that I could not do so".

This, if true, would be an attempt to obtain assistance from a Government servant. But we find that it was an unwary statement made in cross-examination in a bragging spirit and cannot be relied upon as true. This witness made some other reckless and untrue statements also in cross-examination. For instance, he professed to recognize the English signature of Lal Singh, an ex-employee of the respondent's shop. He, however, admitted that the alleged correspondence which Lal Singh had with him some time and on the basis of which he professed to identify Lal Singh's signature, was in Urdu and that Lal Singh used to sign that correspondence also in Urdu and not in English. He further stated that he knew the hand-writing etc. of Lal Singh because he was his class-fellow. He admitted that Sital Singh aforesaid was their teacher. Sital Singh as R.W. 20 however, gave a lie direct to this statement of Moti Ram by saying that Moti Ram was in a much higher class, when Lal Singh joined the school and that they were never class-fellows. We have, therefore, no hesitation in rejecting as untrue the aforesaid reckless statement made in cross-examination by way of bragging with a view to show his own honesty that even on the request of the respondent he refused to help him because as a Government servant he could not do so. Having found in this case that the respondent did not obtain the assistance of any other Government servant to further the prospects of his election, we are loath to believe that the respondent asked such assistance of the postman Moti Ram.

This finishes paragraph 5 of the petition, Lists 'F' and 'D' and issue No. 1. We find on this issue against the petitioner, in its entirety.

**Issue No. 8.**—This is a general issue. It was framed because a general allegation like this was made in paragraph 16 of the petition. Its decision rests on that of the other issues, especially Nos. 1, 4 and 6. Like the aforesaid paragraph 16, it is only a summing up of the allegations forming subject-matter of the preceding issues. Findings on all the issues, the onus of which was on the petitioner, have been given against him. The onus of only one issue, namely No. 5, was on the respondent. The matter of that issue has been held to be not proved, but the same has no effect. We, therefore, find on this issue No. 8 also against the petitioner. Thus, no ground has been made out on which the election of the respondent can be declared to be void.

For the foregoing reasons, the petition falls and is hereby dismissed. Shri Satya Dev petitioner is directed to pay Rs. 700, as costs to Pt. Padam Dev, respondent No. 1.

(Sd.) J. N. BHAGAT, Chairman.

(Sd.) TEJ SINGH VAIDYA, Member.

#### JUDGMENT OF SHRI DAULAT RAM PREM, B.A.L.L.B., MEMBER

##### (DISSENTING)

With unfeigned respect to my learned Colleagues, I feel constrained to differ from them on findings arrived at on issue No. 1, relating to appointment of Sital Singh, Extra Departmental Agent as polling agent and subscription of the nomination papers of Respondent No. 1 by Daulat Ram and Moti Ram, two employees of the Postal Department. On all other issues we have been unanimous in our decision, though I cannot subscribe to all the reasons advanced for arriving at such conclusions. The learned Chairman of the Tribunal has set out the case of the parties in his judgment and has also set out therein the issues framed in the

case, and it is unnecessary to recapitulate the same. With regard to issue No. 1, concerning the procuring of official assistance by the respondent from Sital Singh, Daujat Ram and Moti Ram, Government Servants, I have been unable to agree with the learned Chairman, the view taken being different. I, therefore, proceed to record my view by this separate judgment on these points.

It is admitted fact that Sital Singh a; Extra Departmental Agent was appointed polling agent at Arhal by the Respondents and that he acted as such on the polling day. Respondent No. 1 as R.W. 33 admits that he appointed Sital Singh as polling agent for Arhal because he knew all the people. Sital Singh (R.W. 20) also deposes that he acted as polling agent for the respondent.

Three main objections were taken by the learned counsel for the respondent:—

- (a) That Sital Singh was not a person serving, under the Government of India.
- (b) That assuming that Sital Singh was Government servant his merely acting as polling agent does not fall within the ambit of S. 123(8) of Representation of People Act, and does not constitute major corrupt practice.
- (c) That the petitioner has stated neither in the petition nor in the Annexures that Sital Singh acted as polling agent. Hence, this Tribunal has no jurisdiction to go into this matter.

As to (a) It has been strenuously urged by Shri Mukat Bhari Lal Bhargawa, the learned counsel for the respondent No. 1, that Sital Singh is not a person serving under the Government, because he has been described as Extra Departmental Agent and not a servant; he is not whole time employee; classification and Appeal Rules do not apply to him and his hours of work are limited to five.

In order to find out whether a person is a servant or an agent, mere nomenclature given to a person is not the deciding factor. The distinction between a servant and an agent has been clearly brought out in number of Text Books on Law of Contract. Chitty on Contracts, 20th Edition at Page 1153 remarks that "the contract creating the relationship of master and servant must be distinguished from the contract of agency, though a servant may also be an agent and from the contract for services as distinct from the contract of service. It is a question of fact to be decided on all the circumstances of each case, but is dependent in part on the amount of control exercised by the employer." Simmons V. Heath Laundry (1910) 1 K.B. 543 (549, 550) Gold V. Essex C.C. (1942) 2 K.B. 293.

During the arguments I questioned the Counsel for the respondent to explain the difference between a servant and an agent. His answer was that an agent was governed by the terms of agency while a servant was not. The answer is unsatisfactory. What is the test to determine whether a particular person is a servant or an agent? That which distinguishes an agent from a servant is not the absence or presence of fixed wage or the payment only of commission or business done but rather the freedom with which an agent may carry out his employment. Is he controlled in the hours he must work, the place where he must work; is he at liberty to leave the work without permission, is he to obey the direction of the employer and the master carrying out those directions; is he liable to punishment for dereliction of duties etc.? These are some of the tests to distinguish a servant from an agent.

According to Oxford Dictionary, "A servant is a person who has undertaken to carry out the orders of his employer". The criterion is to find out if there is control over his action by the person employing him. An agent is not under the control of his principal, whereas a servant is under the control of his master. R. V. Walker (1858) 27 L.J.M.C. 207, R. V. Negus, L.R. 2 C.C.R. 34, R. V. Bower (1866) L.R. 1 C.C. at page 45. A person is under the control of another if he is bound to obey the orders of that other not only as to the work which he shall execute but also as to the details of the work and the manner of its execution. Stein V. Larkin (1934) 1 K.B. at P. 198 Simmons V. Jeath Laundry (1910) 1 K.B. 543. Templeton V. William Parkin & Co. (1929) 140 L.T. 519. It is not necessary that control should be continuously exercised. It is the right or power to control, derived from agreement between the parties that creates the relationship. Bobby V. Crosbie (1915) 85 L.J.K.B. 239, Richards V. Pitt. (1915) 84 L.J.K.B. 1417, Sadler V. Henlock (1855) 24 L.J.Q.B. 138.

The question whether a person is under the control of another is always a question of fact to be decided on the circumstances of each particular case. Jones V. Scullard (1898) 2 Q.B. 565, Simmons V. Heath Laundry (1910) 1 K.B. 543. It was pointed out by Bramwell J. in R. V. Walker (1858) 27 L.J.M.C. 207 that "a principal has the right to direct what the agent has to do, a master has not only that right but also the right to say how it is to be done."

Bearing these principles of law in mind let us scan the evidence adduced in this case in order to find out whether Sital Singh was only an agent or servant. Shri Ram Prasad Singh, Complaint Inspector, General Post Office, Simla, R.W. 29 has stated in his evidence that applications are called for when an Extra Departmental Agent is desired to be appointed. Before appointment an enquiry is made regarding his character. He has to give a declaration as prescribed by R. 16 (1)(b) of Post & Telegraph Manual Vol. III, which runs thus: "I do hereby declare that I have read the Government Service Conduct Rules and thoroughly understood them." Such a declaration has to be given even by persons appointed to permanent post. The Extra Departmental Agent has to furnish security because he has to handle cash. He has to apply for permission before he can go on leave and according to the note under Rule 91 of the Manual applications for leave from E.D. Agents are required to be preserved for 3 years. Acquittance Rolls are prepared regarding payment of allowance to Extra Departmental Agent and they are paid allowances monthly. Such Agents are liable to punishment like permanent servants of the same clause under R. 12-A(2) of Posts & Telegraph Manual, Vol. II. Such punishments are detailed under R. No. 11. As in the case of permanent servants charges have to be framed and inquiries made. When they are summoned by a Court to give evidence, summons are served through the department.

More cursory reading of the evidence given by R.W. 29, makes it abundantly clear that Sital Singh, Extra Departmental Agent is under the control of the Postal Department with regard to his appointment, leave, punishment, etc., and as such fulfills the conditions of a servant.

Kahan Chand, Extra Departmental Sub Post-master, Rohru has appeared as witness (R.W. 31). He is brother of Sital Singh. He deposes that Sital Singh used to get Rs. 10 as darkness allowance.

It is significant that in the circle orders, R. 62, the word used as to Extra Departmental Agent is "employed". Rule 62, as it appears from the evidence of R.W. 29, runs thus: "Persons employed as Extra Departmental Agents have no claim whatever to any permanent appointment or promotion in the department". Sec. 2(c) of the Post Office Act defines "Officer of the Post Office" which "includes a person employed on behalf of Post Office or to do any work of the Post Office." In Stroud's Judicial Dictionary, Vol. II, at P. 945, the expression "Person employed under the Post Office" as used in the Post Offices Offences Act, 1837 and Post Office Act, 1908 has been defined thus:-

"The term 'employed' in this Statute means 'engaged or occupied' R. V. Reason 23 L.J.M.C. 13, and it was there held that a person who at a Postmaster's request gratuitously assisted him in sorting letters was within the section."

"In IV House of Lords Cases (Emmings Vs. Elderton) pp. 624 to 654, it was held that "the word 'employ' does not necessarily mean employed in actual work but as observed in the judgment of the Court below may be fulfilled by keeping him in the service."

Again, Sital Singh, Extra Departmental Agent used to handle cash and received money on behalf of Government of India. Sec. 21(10) Indian Penal Code lays down that any person who receives any money on behalf of the Government is a public servant. The learned Counsel for the respondent contends that Sital Singh may be a public servant for the purpose of penal statute, but he is not a person serving under the government. The words used in Section 123(8) of the Representation of People Act are "serving under the Government of India". It is plain that he is a servant in the Postal Department and getting remuneration for the same. The department has control over his movements with regard to leave, hours of work, etc. and he can be punished for dereliction of his duties. I hold that he is a person serving under the Government of India. Moreover, employment of Sital Singh will amount to holding an office of profit.

In United States V. Hartwell (6 Wall 385) it is laid down that "an office is a public station or employment conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument and duties." It is also held that an office is "an employment on behalf of the Government, in any station of public trust, not merely transient, occasional or incidental Cong. 3rd Sess. quoted by W. W. Willoughby, Constitution, (Vol. I, p. 605). Actual making of profit is not necessary to make an office one of profit and it is enough if the holder may reasonably be expected to make a profit out of it. Delave V. Hill quoted in Basu's Constitution of India. 1st Edn. P. 314.

It cannot be said that Sital Singh's appointment was only occasional or transient. He himself admits as R.W. 20 that he had been doing the postal work for over 20 years and that he was popularly called 'postmaster'. He was subject to the control of the Postal Department as regards leave, obeying of Postal circulars and punishment Rules like other employees of permanent services. Under the circumstances set forth above, the conclusion is irresistible that Sital Singh was serving under the Government of India and his appointment as Polling Agent amounted to major corrupt practice within the meaning of Section 123(8) of the Act.

As to (b) the contention of Respondent No. 1 is that mere appointment of a Government servant as Polling Agent does not amount to major corrupt practice, as defined under Section 123(8) R.P. Act. The contention is that a Polling Agent is employed more for the purpose of securing purity of election rather than advancing the prospect of candidates' election. In this connection our attention has been drawn to three cases reported in Gazette Extraordinary Two of P.E.P.S.U. Tribunal and one of Jubbulpore Tribunal.

In Lehri Singh V. Attar Singh, the Commissioner of the P.E.P.S.U. Election Tribunal observed "it is proved beyond doubt that Chajju Ram a government servant was appointed polling agent by Attar Singh and did act as such at Nandha polling station and that this amounted to corrupt practice under Clause (8) of Section 123 of the Representation of the People Act and on issue 1(d) our decision is that in view of the commission of this corrupt practice the Election of respondent No. 1 is liable to be declared void without the necessity of finding whether the result of the election was thereby materially affected or not."

See *Gazette of India, Extraordinary*, dated 5-2-1953.

In Ghasi Ram V. Ram Singh, the said Tribunal at P. 490 of the same Gazette said: "We feel driven to the conclusion that the appointment of Mehtab Singh of Agra by Ram Singh as polling agent at Bibipur and his working as such on two days are facts proved beyond all doubt. The crux of this provision of corrupt practice is to prevent a candidate from taking advantage of the influence which a Government Servant by reason of his position is supposed to have with the people. It cannot be gainsaid that a member of Debt Conciliation Board can have considerable influence with the rural population of the area within his jurisdiction. When the Government has appointed a person to be member of the Board and pays him for working as such, he cannot be anything other than a servant of the government by whatever name one may refer to the emoluments. Further looking to the duties of a polling agent which are primarily to safeguard the interests of his candidate in the election there cannot be any doubt that the assistance given by the polling agent is in furtherance of the prospect of the candidate's election. We, therefore, find on issue II that the corrupt practice under Section 123(8) of the Representation of People Act is established in this case." But, in Narayan Das V. Manohar Rao Jatar, *Gazette Extraordinary*, dated 26-2-1953 the Jabalpur Election Tribunal said, "He (Tooman Chand a government servant) had, no doubt worked as respondent No. 1's polling agent on the date of the polling at Kalar Banki. But in our opinion a polling agent is a person more to assist the work of polling than to work for the candidate in the polling station." With this observation I cannot agree. No reasons have been given for such a proposition. The provisions of Section 123(8) of Representation of the People Act 1951, have neither been mentioned nor duly considered. A judgment in order to be binding precedent must contain three essential elements Law, Logic and Literature. With great respect to the learned Commissioner, I maintain that the Law has not been correctly laid down in this respect.

Law speaks with clear voice and indubitable language when it says that so far as persons serving under the Government are concerned, they can only give their votes. This is the only exception added to Section 123(8) of the Act. It necessarily follows that other acts in the conduct of an election are necessarily barred. The mischief guarded against is the interference by government servants in the election. Appointment of Polling Agents by a candidate is more for safeguarding the interest of the candidate than for performing a mere public function to preserve the purity of election. If the Polling Agent who is vigilant and knows the people gets few votes of the rival candidate rejected by valid objections, the prospects of the election of his own candidate are considerably increased thereby. Respondent No. 1 as R.W. 33 admits that he appointed Sital Singh as Polling Agent because he fully knew the people of the Constituency. He had been a Postmaster for over 20 years. I hold that appointment of Sital Singh as Polling Agent is per se major corrupt practice.

As to (c) it has been strenuously urged by respondent's counsel that as Sital Singh's appointment as Polling Agent has not been mentioned in any of the annexures it would amount to introducing a fresh instance of corrupt practice and the Tribunal has no jurisdiction to go into this matter. I think there is considerable force in his contention. It is nowhere mentioned in the petition or the annexures that Sital Singh was a Polling Agent. All that is set out is that Sital Singh did propaganda, took an active part and canvassed for respondent No. 1. In para 9 of list 'D' it has been alleged that "on 21-11-51 Karam Chand Chauhan with the connivance of the respondent No. 1 as well as his agents Sital Singh and Kahan Chand postmasters of Arhal and Rohru respectively, told the voters of the neighbouring Haqqa and spread a rumour that the petitioner was man-handled at Tikkar by the villagers who did not want him to contest and as a result he had to leave behind his horse and kit. This was a wholly false rumour. The voters were also told that the petitioner had withdrawn from the contest".

The rule enunciated in section 83(2) of the Representation of People Act is a salutary rule and is intended to avoid surprise to the opposite party and manipulations and developments on the case as originally presented. Fresh instances of corrupt practices cannot be introduced as this would virtually amount to amendment of election petition after the period of limitation and an election Tribunal has no jurisdiction to do so. The Tribunal is authorised under Section 83 of the Act to ask for better particulars and to amplify the same if they are vague or insufficient.

In another election petition decided by this Tribunal viz. Haridas V. Hira Singh Pal reported in *Gazette of India Extraordinary*, dated 20-3-1953 at page 890 I had occasion to deal with this matter. The petitioner stated that "The election has not been free election by reason of coercion and intimidation exercised on the tenants by threats held out that if they voted for the petitioner the land in their occupancy will be taken away from them. No particulars were furnished as to the names of tenants nor the place and date of the alleged corrupt practice. To substantiate such vague allegations petition sought to lead evidence to the effect that undue influence was exercised on Saudagru, Gandhi, Tiku etc., some of the tenants. "On 5-9-1952, I passed the following interlocutory order: "In my opinion this evidence with regard to the intimidation held out by the Polling Agent to Gandhi, Saudagru and Tiku, tenants, is inadmissible as the petitioner has not given the particulars with regard to this matter.

In marshalling evidence parties have to confine themselves to particulars annexed in the petition and the written statement. The law regarding this is well settled. In the case of false statement particulars must clearly and succinctly state that the alleged false statement was made to certain specified persons on particular date and a particular place. The object is to give the other party a full notice so that he can also make enquiries in that place and lead evidence in rebuttal. It will be a dangerous precedent to allow laxity in this respect. Any particular not complying with the standard set forth above shall have to be rejected and any evidence led in contravention of this rule shall have to be rejected if objected to by the other party. Para. (iv) (b) of the petition is vague. A concession was given to the petitioner to file full particulars with regard to the same. In his particulars he never mentioned this fact that several tenants including Gandhi, Saudagru and Tiku at Dhundhan were threatened by Hari Ram Polling Agent of Hira Singh Pall. I, therefore, hold that evidence with regard to this matter is inadmissible and it shall be deemed to be expunged. I have stated my reasons at some length because I want the parties to take particular note of this fact so that in future they have to confine their evidence only with regard to particulars they have stated in the petition or the written statement. No departure from this rule will be permitted, otherwise the record of this case will become unnecessarily cumbersome." My learned colleagues did not agree with me in ruling out the evidence sought to be led to substantiate this vague allegation without any particular and they passed the order in the following term:—

"We reserve our opinion in this matter till the final stage of the case", with the result that such evidence was admitted.

It has been urged by Shri Rajindar Sachar, learned counsel for the petitioner that as Shri Padam Dev, respondent himself admits in his evidence as R.W. 33 the commission of the corrupt practice, the Tribunal has jurisdiction to go into the matter. He has brought to our notice a decision of the Election Tribunal in the case of Sheikh Mohammad Hussain V. Dr. Saifud-Din Kitchlew (Sen and Poddar, Indian Election Cases 27 at page 30).

I agree that Tribunal has jurisdiction but absolutely fresh instances cannot be introduced by the petitioner. It is true that Sital Singh has been described as agent in para. 9 of list 'D' in connection with spreading rumour against Thakur Gian

Singh but this will not amount to sufficient notice to the respondent that petitioner wants to challenge the Election Petition on the ground of his appointing Sital Singh as Polling Agent. An agent for canvassing is necessarily different from the Polling Agent. In spite of the decision in Saif-ud-Din Kitchlew's case, I take a broad view of matter and even if I err on the side of leniency, I would give the benefit of doubt to the respondent. Consequently I hold that appointment of Sital Singh as Polling Agent cannot be taken into consideration against the respondent and I order accordingly.

#### *Government Servants cannot Propose or Second*

Issue No. 1.—Admittedly Daulat Ram of Sharog, a Packer, G.H.Q. Post Office, Simla (R.W. 32) was a proposer and Moti Ram a Postman, Secretariat Post Office, Simla (R.W. 18), a seconder of the nomination papers of Shri Padam Dev, Respondent No. 1. These facts are undisputed. The allegations against these two Government Servants that they were proposer and seconder of respondent No. 1 are contained in para. 5 of List 'D' which runs as follows:—

"Moti Ram and Daulat Ram of Sharog who were working as postman and packer in the Post Office and were Government Servants did extensive propaganda in favour of respondent No. 1 and told the voters that they must vote for the respondent No. 1 who was the official candidate helped by the Government and in case they did not do so they would be severely dealt with. These two persons were the seconder and proposer of the respondent No. 1. Shri Daulat Ram took leave from 15-11-51 and for some other days also and came back to his duty long after 23-11-51 after helping the respondent No. 1 by making the propaganda in his favour and in various other ways."

In his written statement dated 31-5-1952 Shri Padam Dev respondent replies:—

"It is denied that Moti Ram and Daulat Ram of Sharog did any propaganda work in favour of respondent No. 1, or any of them told the voters to vote for respondent No. 1. It is, however, admitted that these two persons were seconder and proposer of respondent No. 1. The rest of para. 5 is denied for want of knowledge."

Both Daulat Ram and Moti Ram have been produced by respondent No. 1 as witnesses. Moti Ram R.W. 18 postman, Secretariat Post Office, Simla, states that he signed the nomination papers of Pandit Padam Dev as Seconder. He further states that the respondent No. 1 asked him to write letters to his relatives etc. to give vote to him, but the witness excused himself by saying that he could not do so.

Daulat Ram of Sharog, Packer, G.H.Q. Post Office, Simla (R.W. 32) states, "I identify my signature as a proposer on a nomination paper of Shri Padam Dev (Page 171 of the file of Nomination Papers). I signed the nomination papers in my own quarter at Simla.

Shri Padam Dev, Respondent No. 1 (R.W. 33) deposes as under:—

"On the nomination papers on page 171, the signature as the proposer is of Daulat Ram of Sharog who appeared as my witness today."

In his cross-examination he states, "I did get my nomination papers signed by Moti Ram Postman and Daulat Ram Postal packer as a seconder and a proposer respectively. They did so on different nomination papers. I got their signatures in their own postal quarters. It was about 8 or 9 A.M. I do not remember the date. Phina Das was a seconder of one of my nomination papers. Sham Lal was a seconder on another nomination paper of mine. None of the aforesaid four persons was with me in the office of the Returning Officer at Kasumti on the day of the scrutiny. I know that the aforesaid four men were in service. I knew that they were in Government Service."

Faced with this difficult situation the learned counsel for respondent No. 1 asked him to explain the circumstances under which he got assistance of government servants and in his re-examination he states:—

"I made Moti Ram, Daulat Ram and Sham Lal sign my nomination papers as a proposer or a seconder because I thought that every voter could propose or second a nomination. I did not find any bar to the same as far as I looked up the law at the time. Moreover, being very busy I had to take proposers and seconders from Simla. Sham Lal was on leave here in those days. I knew that they were government servants."

Shri Mukat Bihari Lal Bhargava, learned counsel for respondent No. 1 has raised a number of objections and I propose to consider these objections separately.

Firstly he contends the fact of proposing and seconding by Daulat Ram and

Moti Ram has not been specifically mentioned as corrupt practice and, therefore, the tribunal has no jurisdiction to go into this matter. He further contends that the particulars were insufficient and, therefore, there was no sufficient notice to respondent No. 1. It is clear that in paragraph 5, three corrupt practices have been grouped together:—

(i) Moti Ram and Daulat Ram of Sharog who were working as Postman and packer in the Post Office and were Government servants did extensive propaganda in favour of respondent No. 1 and told the voters that they must vote for the respondent No. 1 who was the official candidate helped by the Government and in case they did not do so they would be severely dealt with.

(ii) These two persons were the seconder and proposer of the respondent No. 1.

(iii) Shri Daluat Ram took leave from 15th November 1951 and for some other days also and came back to his duty long after 23rd November 1951 after helping the respondent No. 1 by making propaganda in his favour and in various other ways."

Of course, it was desirable that all these three corrupt practices should have been set forth in separate paragraphs but omission to do so is immaterial. The statement of fact that Moti Ram and Daulat Ram were the seconder and proposer of respondent No. 1 as contained in List 'D' appended to the petition and the written statement and evidence of Shri Padam Dev respondent No. 1 as set forth above is so clear that it did not require any amplification. In such a plain and obvious matter, no better and further particulars by any stretch of imagination could be called for or ordered by any Tribunal. To do so would have been to document the evident and, to use a familiar expression, to gild the Lilly.

A contention has been raised that with this statement of fact in the annexure it should have been added that proposing and seconding by Daulat Ram and Moti Ram constitutes a corrupt practice. This contention is devoid of any force.

(i) The statement in the annexure D that these two persons were proposer and seconder of respondent No. 1 has to be read along with para. 5 (f) of the petition which runs thus:—

"The respondent No. 1 or his agents or other persons with the connivance of respondent No. 1 or his agents obtained or procured or abetted or attempted to procure the assistance for the furtherance of the prospects of the election of the respondent No. 1 from a large number of persons serving under the Government. Full particulars of the corrupt practices mentioned in this sub-para. are given in the list marked as 'F' attached with this petition, which may be read as a part of this petition."

(ii) It is not necessary to add to the statement of facts any legal inference arising therefrom. The duty of the petitioner is to set out the facts constituting corrupt practice and it is for the Court to apply the law to the relevant facts. In this connection the law has been very clearly and succinctly laid down by various High Courts:—

In India as in England, the duty of a pleader is to set out the facts upon which he relies and not the legal inferences to be drawn from them. 1943 P.C. 147 (Gouri Dutt Ganesh Lall V. Madho Prasad and others).

In Gaura Telin Vs. Shriram Bhoyer & others, 1926 Nag. 265, it was pointed out that the common idea that a Court is not bound to consider, or rather is bound not to consider, any view of the law in respect of the facts before it except such as is laid before it formally by the parties or their pleaders, if they happen to have any and further is required to answer nothing but 'yes' or 'no' to any plea of law that may be taken is wrong. It is the duty of the Court whether with or without the help of the parties or their pleaders to discover for itself and to apply the law applicable to the facts pleaded and proved.

(iii) Proposing or seconding a candidate is *per se* a corrupt practice and nothing more could be alleged in this connection.

(iv) No particulars regarding time, date or place could be called for, nor the petitioner could by any stretch of imagination furnish such particulars. Moreover, such particulars were absolutely unnecessary.

It is significant that no objection was ever raised about the vagueness of particulars during the trial beginning from 31st May 1952 when respondent No. 1 filed his written statement admitting this corrupt practice.

The law as regards furnishing of particulars has been the subject-matter of many decisions both in India and England.

In the case Wigan (1881), 4 O. & H. 234., Bowen J., said, "The object of these particulars is simply to prevent surprise and unnecessary expense. In this case full particulars have been given. A number of names have been given of persons who are supposed to have been treated or bribed at particular places and at the end of the list of names comes this, that persons are supposed to have been bribed whose names are at present unknown; and the persons who are presenting the election petition may really be *bona fide* ignorant of the names of the persons who were receiving bribes or being treated at that particular place; and they ought not to be prevented from going into those cases simply because they cannot give the names of the persons with respect to whom the criminal act is supposed to have been committed. What they are bound to do is to tell the most they can at the time these particulars are given; and at all events, before the trial, to tell as much as they can to put the sitting member and his counsel upon inquiry, and to prevent surprise or expense..... Grove, J., has pointed out that this is not a fresh case which is being started, and his observations are in accordance with what I find in the judgment of Martin, B., in Beverley, where he points out that the object of the particulars is not to limit the witnesses called, but merely to limit the acts relied upon for the purpose of unseating the respondent. I should be perfectly prepared to take broader grounds and to say that a judge sitting here to try the election petition can at any moment receive any evidence, provided he takes care that there is no surprise upon the sitting member by its being tendered" See the Law of Parliamentary Elections and Elections Petitions by Sir Hugh Fraser III Edn. pp. 220-221. "What they (petitioners) are bound to do is to tell the most they can at the time these particulars are given. But it is said that the order for particulars has been drawn up by the Court in a form that the petitioners could be precluded at the trial from going into any case of which the aforesaid particulars have not been delivered. That is..... an order that can be modified at any time and I confess I should not hesitate myself at any moment to disregard that prohibition and to amend the order by stating that further cases might be gone into if the justice of the case required it and if there was no chance or danger of surprise upon the sitting member." This statement was approved in East Cork (1911) 6 O'M & H 320. See Rogers on Election Vol. II, Twentieth Edition pp. 195-196.

#### *Admission of corrupt practice by respondent*

It was held in Amritsar Mohammad Constituency Case (1937) Sheikh Mohammad Hussain V. Saifuddin Kitchlew reported in Sen and Podder "Indian Election Cases" P 27 at 30 that "on the evidence the Tribunal held that it was not established that any promises on oath were taken from the audience by the Maulana, who however, admitted that at every place he said 'to vote for the Unionist Party candidate is Haram.' It remains to consider whether this declaration constitutes a corrupt practice. A point of importance to note is that no such allegation was contained in the petition. There it was alleged only that Maulana made his audience take oaths to vote for Sheikh Hussain-ud-Din and used spiritual threat against person who did not vote for him. There is authority to the effect that where a returned candidate who is respondent himself admits the Commissions of a corrupt practice the Commissioners may find that he was guilty of such corrupt practice though it was not specially alleged in the petition- vide Rangoon west (G.W.) 1926. Hammond P. 605, and Bareilly City (N.M.W.) 1924 Hammond P. 127"

The cardinal question in this case is whether the allegation was vague and whether any surprise was sprung upon the respondent and whether he has insufficient notice about this particular. Respondent's admission in his written statement and his own evidence conclusively establishes that he had full knowledge of the allegation against him from the very beginning. I am surprised that such a frivolous objection should have been raised for the first time during the course of argument. I hold that the objection is not only frivolous but groundless and, therefore, I overrule the same.

Secondly the learned counsel for the respondent vehemently contents that the right to vote or to nominate a candidate is a fundamental right which includes proposing and seconding and to deprive one of such right would amount to disfranchisement. This argument is fallacious.

The suffrage or elective franchise is not a natural right in the sense that anyone has a right to have it conferred upon him. It is rather a privilege which is conferred upon such persons or classes of persons as seem best fitted to exercise it and whose exercise it seemed likely to be most conducive to general welfare.

The right to vote, properly viewed is an opportunity extended by the State to the citizen, and he should be free to take advantage of it or ignore it. Sound public policy points not in the direction of compelling citizens to vote but rather in the direction of making the exercise of this right purely voluntary by removing every influence which now militates against free choice. It is not a fundamental or inalienable right. It is only a political privilege as distinguished from civil right because in a democracy, it is a means whereby the individual may participate in public affairs. The right to vote or nominate a candidate is derived from the Constitution and is regulated by the statute in conformity with the dictates of the Constitution.

Before the inauguration of our Constitution on 26th January there were property, income and Educational qualifications for a person before right of vote was conferred on him. This was so in various States of the U.S.A.

By the nineteenth Amendment to the U.S.A. Constitution adopted in 1920 both the State and National Government were deprived of the right to discriminate among citizens of the United States in the matter of voting on account of Sex. Since its adoption women acquired the right of voting on an equality with men throughout the nation. This amendment came under judicial review in 1922 and the Supreme Court held it to have been validly enacted. Lwsser V. Garnett 258 U.S. 130; Fairchild V. Hughes 258 U.S. 126. As early as 1874 a Mrs. Minor brought a suit to compel election officer to accept her vote on the ground that she had a right to vote by virtue of being the citizen of the United States. The Supreme Court held that right to vote was not a necessary privilege of citizenship. Minor V. Happerset (1874) 21 Wall 162. A Georgia statute which excepted women from requirement to pay a poll tax as a prerequisite for voting was held not to violate the Nineteenth Amendment. Breedlove V. Suttles (1937) 302 U.S. 277.

In the Ku Klux case, (110 U.S. 651) the Supreme Court intimated that the right to vote for members of Congress is a right derived from the Federal Constitution and that Congress is empowered to protect it against violence or intimidation on the part of mobs or private individuals. It was not only the power but also the duty of Congress to afford such protection, not only because of the interest of the voter.

....."but from the necessity of the Government itself that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its members of congress and its President are elected shall be the free votes of the electors, and the officers thus chosen the free and uncorrupted choice of those who have the right to take part in that choice."

**Ex-Parte Yarborough** 110 U.S. 631 (1884).

In England the same qualifications were necessary. Moreover, it is within the right of a State to disenfranchise a portion of citizens. "The people and the Electors" are two different things. State can prescribe disqualifications for voters. Till 1918, in advanced country like England, women had no right to vote and send their representative to the Parliament. Women secured the right of voting after a prolonged agitation by Act of 1918.

"A woman shall be entitled to be registered as a parliamentary elector for a constituency (other than a university constituency) if she has attained the age of thirty years and is not subject to any legal incapacity and is entitled to be registered as a Local Government Elector in respect of the occupation in that constituency of and or premises (not being a dwelling house) of a yearly value of not less than £5 or of a dwelling house or is the wife of a husband entitled to be so registered." See Representation of People Act 1918 (7-8 George V.C. 64).

In 1928 an Act called Equal Franchise Act 1928, (18-19 George V. C. 12) was passed to assimilate the franchise for men and women in respect of Parliamentary and local Government Elections. It eliminated all discriminations on the ground of sex.

The most widely accorded political privileges of the Indian citizens is that of voting at election. It is privilege that is not extended to children, who are citizens but no voters. It is not expedient to give this privilege to persons of immature age or of unsound mind who cannot exercise this right intelligently for the welfare of the Nation. People and Electorate are two quite different things. Body of Electors or voters comprise that portion of the People to which it is expedient to give the suffrage. The right to vote by Government servants has been preserved by section 123(8) of the Representation of the People Act 1951 but right to propose and second or to become a polling or Election Agent has been taken away, in order to preserve the purity and free nature of the Election.

*Thirdly* it has been strenuously urged by the respondent that Section 33(2) of the Representation of the People Act prescribes the qualifications of persons who can subscribe to the nomination papers of the candidates, and, as no exception has been enacted in the case of Government Servants they have absolute and unqualified right to propose and second a candidate.

Section 33(2) lays down that "any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the People Act 1950 (XLIII of 1951) may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more". Section 16 of the Representation of the People Act, 1950 says that "A person shall be disqualified for registration in an electoral roll if he—

- (a) is not a citizen of India; or
- (b) is of unsound mind and stands so declared by a competent court; or
- (c) is for the time being disqualified from voting under the provision of any law relating to corrupt and illegal practices and other offences in connection with elections.

Arguing on the basis of the above mentioned provisions of Law, the respondent's counsel describes them as "charter" for all the voters, including a government servant, to propose or second a nomination paper. Section 33(2) is a permissive provision enabling all voters to subscribe as proposer or seconder. But Section 123(8) is a restrictive clause and debars all persons serving under the Government from giving any assistance for the furtherance of the prospects of the candidate's election except by giving vote. Hence, the latter provisions as contained in Section 123(8) over-ride Section 33(2) of the Act.

If the interpretation put by the respondent's counsel were to prevail, it would lead to absurd results. To illustrate Section 40 of the Act prescribes that a candidate can appoint either himself or "someone other person to be his election agent". The only disqualification for appointing an election agent is contained in Section 41 which says that no persons shall be appointed his election agent who is disqualified from being an election agent under Section 145. The disqualifications mentioned in section 145 make no mention of any Government servant. The necessary result would be that a government servant can be appointed as an election agent. Similarly, he can be appointed a polling agent under section 46 or counting agent under section 47 of the Act. The whole scheme and the policy of the Act will be entirely frustrated if Government servant can be election agent, polling agent or counting agent; and the stringent and mandatory provisions of section 123(8) shall be rendered nugatory.

Great stress was laid on the words "Any person" occurring in section 33(2) of the Act. But it must not be forgotten that section 33(2) is only a permissive clause, while provisions enacted in section 123(8) are restrictive in their nature, so far as Government servants are concerned.

The expression "any person" came under judicial review in England.

In *Nairn and others Vs. University of St. Andrews and others*, (1909) A.C. 147, it was observed by the House of Lords that by Section 27 of the Representation of the People (Scotland) Act, 1868, "Every person whose name is for the time being on the register... . . . of the general council of such university, shall, if of full age, and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament or such university in terms of this Act"; and by section 28 subsection 2 the following persons shall be members of the general council of the Respective universities: "All persons on whom the university to which such general council belongs has after examination conferred certain degrees, or any other degree that may hereafter be instituted". The appellants were five women graduates of the University of Edinburgh, and as such had their names enrolled on the general council of that university, and they claimed as graduates and members of the general council the right to vote at the election of a member of Parliament for the university. It was held that the appellants were not entitled to vote in the election of the Parliamentary representative of the university. The words "every person" have to be read subject to other disqualifying clauses of the statute or the Constitution. Hence, I hold that, so far as Government servants are concerned, their "charter" is not section 33(2) but section 123(8) of the Act, and they cannot subscribe to the nomination paper as proposer or seconder. If they do so, it shall render the election of returned candidate void.

*Fourthly*, it has been urged that the assistance described under section 123(8) of the Act conipratis only "in furtherance of the prospect of election" and does not apply to the stage of nomination. This contention has no substance at all. The

word "election" has been defined in section 2(d) of the Act and means "an election to fill a seat in either in the House of the Legislature of the States"

The question for adjudication is whether nomination can be considered to be a stage of election and whether assistance by a Government servant in subscribing to the nomination paper of a candidate is an assistance in the furtherance of the prospects of candidates' election. In Chhota Nagpur Division Case 2 H I E P 99, at page 103, the Commissioner observed "elect on includes nomination which is one of the processes necessary to complete it". Again, in Belgaum District Case 1 H I E P 45 it was held that nomination is one of the earliest stages of election. The question as to constitutionality of clause providing punishment for corrupt practice and the maximum amount to be spent in election came up before the Supreme Court of U.S.A. and it was contended that this clause did not apply to the process of nomination. Justice McReynolds speaking for the five justices said that the word "election" as used in the constitution means merely the "final choice of an officer by the duly qualified voters".

In fact election begins about a month or so before the nomination papers are filed before the Returning Officer and a candidate is bound under the law to file a return of election expenses under section 76 of the Representation of the People Act. In such a case "election" begins when a candidate gives out his intention to fill a seat in the Legislature.

The provisions regarding nomination are contained in Part V, Chapter 1 of the Act. The heading is "conduct of election" and Chapter 1 begins with "the nomination of candidates". The matter is quite evident and requires no further elucidation. A person can be elected when his nomination paper subscribed by Government servants is accepted and when there is no rival candidate, or when the nomination papers of rival candidates are rejected. He is then "elected", without going to Poll. I hold that assistance given by a Government servant by subscribing to the nomination paper as proposer or seconder is a furtherance of the prospect of candidate's election.

*Fifthly*, it is contended that in each case actual furtherance of the prospect of election has to be proved as a question of fact. Section 123(8) penalizes even an attempt to obtain or procure any assistance for the furtherance of the prospect of election. It is not necessary that assistance should actually further the prospects of candidates' election. If the assistance is solicited for that purpose it would fall within the ambit of section 123(8). If a candidate requests the Headmaster of Government High School for the use of school Hall or compound for holding an election meeting and he refuses to give such assistance to the candidate it is a major corrupt practice falling within the ambit of section 123(8) of the Act and will avoid the election.

If in a fair-off district the Deputy Commissioner subscribes a nomination paper as proposer and Superintendent of Police seconded it, it is quite obvious that the prospects of candidates' election have been increased. The learned counsel for the respondent himself in illustration that if Hon'ble the Prime Minister or his Private Secretary were to subscribe to the nomination paper as proposer the prospect of candidate's election would be greatly enhanced. He concedes that if two sweepers serving under the Government are proposer and seconder and the nomination paper is accepted and the candidate is elected without any cost the assistance rendered by these two sweepers is in furtherance prospects of the election. Shri Rajinder Sachar, learned counsel for the petitioner seems to say Law makes no distinction between high Government servant and a denigrating one. Every Government servant is presumed to have some influence by virtue of his position he occupies as such. And the intentions of the election law is that there should be a totally no interference or assistance by a Government servant in the conduct of election.

It is clear from the evidence of Daulat Ram R.W. 32 that he was Secretary of the Union since 1935 and gave up that office for sometime and was the Secretary even now. He says that Moti Ram R.W. is his uncle and that he was a member of Prem Sabha. Considering the influence which a Secretary of the Postal Union can exercise over employees of the Department respondent No 1 approached this witness to subscribe his proposer to his nomination paper. The object was to further the prospect of his election. Moti Ram R.W. 18 deposes that he was a member of the Executive Committee of Prem Sabha which has been started by Pt Padam Dev. In cross examination he stated— I was never Secretary of the Prem Sabha. I was its Treasurer. In view of the public position held by Daulat Ram and Moti Ram Postal Employees the subscribing of nomination papers by them was for furtherance of the prospect of election and I hold it accordingly.

The central fact is that section 123(8) of the Representation of People Act envisages the shutting out of any assistance by persons serving under the Government in the conduct of election, except giving of vote by them by secret ballot. It necessarily implies that they are not to give any indication as to which side they have voted. Respondent No. 1 has produced Shri Ram Prashad Singal, Complaint Inspector, G.P.O., Simla, as R.W. 29. He quoted R. 23 of Appendix 2 of Post and Telegraph Manual Volume II (Edition 1941) which has not been amended since and which runs thus—"A whole-time Government servant shall not canvass or otherwise interfere or use his influence in connection with, or take part in, any election to a Legislative Body whether in India or elsewhere. Provided that a Government servant who is qualified to vote at such election may exercise his right to vote, but if he does so, shall give no indication of the manner in which he proposes to vote or has voted." We find ballot a most admirable machinery for election and it is universally accepted as the means by which public duties may be performed in public.

The policy of the present Act is that it forbids Government Servants from rendering any assistance except by giving vote by secret ballot as there should be absolutely no interference in the conduct of election. In this connection it is necessary to set out the rights and duties of a proposer and seconder. Section 33(1) of the Act lays down that a nomination paper can be filed either by the candidate in person or by his proposer or seconder. Even a duly authorized pleader or agent cannot file nomination paper on behalf of the candidate. Under section 35, the Returning Officer shall "cause to be affixed in some conspicuous place in his office. A notice of the nomination containing descriptions similar to those contained in nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder". Section 36 of the Act prescribes that on the date of the scrutiny of the nomination "the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend on such time and place as the Returning Officer may appoint, and the Returning Officer shall give them all reasonable facilities in examining the nomination papers of all candidates which have been delivered within time and in the manner laid down in section 33."

There is a considerable force in the argument of petitioner's counsel that the proposer and the seconder become the agents of the candidate for the purpose of presentation of nomination paper, and the scrutiny. As their names are published under section 35 by the Returning Officer they give out to the world that a particular candidate is their nominee and that they are for him. Such a course of conduct is clearly against the spirit of the present Act and it means assistance in the conduct of election.

Lastly, it is contended that respondent No. 1 had no wicked intention when he got Daulat Ram and Moti Ram to subscribe to his nomination papers. To prove corrupt practice, proof of evil mind is necessary when an act is capable of two explanations. Whether a donation of, say, Rs. 10 was given to a temple as a pure act of charity or whether it was given as an indirect bribe to the worshippers of the temple, it is necessary to find out whether it was paid honestly or corruptly. The question of evil mind then becomes a question of fact. But where an act is *per se* prohibited by law and constitutes major corrupt practice, it is not necessary to look for evidence as to evil mind. There can be no direct evidence of evil intention. No body can pry into mind of another to find out his motive or intention. Intention can be proved by surrounding circumstances. In this case respondent No. 1, as R.W. 33, admits that he got the assistance of four government servants who signed his nomination papers. They are Moti Ram, Dault Ram, Phing Day and Sham Lal. He further admits that he knew them to be government servants at that time. He pleads ignorance of law with regard to this matter. Ignorance of law is no defence to an offence, although it is palliating or mitigating circumstance to be taken into consideration in apportioning punishment. Second explanation given by the respondent No. 1 is: "Being very busy I had to take proposer and seconder from Simla". This statement is, on the face of it, quite inaccurate and unconvincing. Shri Rajinder Sachar very forcibly and eloquently contends that there were four other persons who subscribed the respondent's nomination papers and they belonged to different villages in Mahasu District. The respondent had sufficient time to get the signatures of persons other than government servants. He further contends that he intentionally got the assistance of Daulat Ram, Postal Packer, because he had been the Secretary of the Postal Union for a number of years and wielded a considerable influence. Both Daulat Ram and Moti Ram were members of the Praja Mandal and Moti Ram was its Treasurer. Thus, both of them were not merely postal employees but were taking active part in public and social affairs. In my opinion this argument has substance in it.

Shri Rajinder Sachar relentlessly attacks the explanation given by respondent No. 1 in this respect. He contends that respondent No. 1 is not a reliable witness because he himself produced two letters dated 17th July 1951 and 9th July 1951 before the Tribunal but he recited from this fact on oath and told deliberate lie when he was examined as witness (R.W. 33.) The portion of his statement is as follows—

"A letter dated 17th July 1951 (on page 879) addressed by the Director of Health Services, Himachal Pradesh, to 13 firms including the D.A.V. Pharmacy, Simla, calling for quotations for supply of certain medicines has been shown to me. I cannot recollect whether I received any such letter and whether any quotations were submitted by my firm in compliance therewith. I have been shown a letter of the Civil Surgeon, Mandi, dated 9th July 1951 (on page 853) addressed to the manager, D.A.V. Pharmacy, Simla, asking for rates of certain medicines specified therein. I cannot say whether any such letter was received by my firm and whether the required quotations were submitted". It is remarkable that these two letters were filed in the Tribunal by the respondent through his counsel Shri Tek Chand Chitkara.

This is really unfortunate that respondent No. 1 who is occupying a responsible position as Home Minister and Education Minister in Himachal Pradesh Government should take up such an unbecoming attitude in a Court of Law and to swerve from the path of rectitude. In my opinion a person who gives evidence in this fashion before a Court of Law stands self-condemned.

In the result, I find that the act of getting signatures of government servants on his nomination papers by respondent No. 1 is not an innocent act but is accompanied with evil mind and corrupt motive.

*Exception in the case of Government servants.*

The only exception engrafted in section 123(8) is as follows:—

"The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person."

The language of the section is quite clear and the only exception engrafted to it is that the only assistance that can be given by the Government official is to cast his vote and nothing more. For the purity and fairness of election our Law advisedly provides for voting by ballot. Secrecy of ballot is guaranteed by the Representation of Peoples Act, 1951.

It is a well recognized principle of construction that where one finds in the same section express exception from the operative part of the section, it may be assumed, unless it otherwise appears from the language employed, that the exception was necessary, and it is equally clear that nothing can be brought within the ambit of that exception which is not comprised therein. In other words, it has to be construed strictly. In order to bring a case within the exception, strict compliance with its terms is absolutely necessary.

Lord Thankerton observed that "it is a familiar principle of statutory construction that where you find in the same section express exceptions from the operative part of the section it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary, as otherwise the subject-matter of the exceptions would have come within the operative provisions of the section". Province of Bombay V. Hormusji Manekji, 1947 P.C. 200.

In interpreting this clause, we have to take into consideration the scheme and policy of the statute and the reasons that led to the changes of law in this respect.

During pre-partition period, there was wide spread misapprehension and unwarranted prejudice regarding interference by the government servants in the elections to the legislature. During those days assistance by Government servants was, according to law then existing, not objectionable. They could exercise their legitimate influence but not undue influence. What was prohibited was abuse of power. Election could be set aside only on proof of exercise of undue influence by officials which materially affected the result of election. This misapprehension justified a strong action and a drastic change in the law. To strike at the root of official interference it has been enacted in section 123(8) of Representation of the People Act that even an attempt to procure or obtain assistance from persons serving under the Government constitutes major corrupt practice avoiding election of the returned candidate. Officers of the Government have been prohibited from

interfering in the election and influencing the voters directly or indirectly. We have introduced voting by secret ballot. Every man voting would thus be enabled to give his vote in accordance with his own conscientious convictions, entirely unfettered or uninfluenced by any other considerations; and the result, I venture to say, beyond all contradiction, would give, in a more faithful manner than is possible under the present system, the actual conscientious verdict of the constituency.

Hence, a candidate cannot get any assistance from a person serving under the Government except giving of vote by such person. Subscribing to the nomination paper as proposer or seconder is *per se* a major corrupt practice under section 123(8) of the Representation of People Act, 1951.

From the foregoing analysis it is abundantly clear that the provisions of Section 123(8) of the Representation of the People Act, 1951, are mandatory and restrict the Government Servant's right to "Giving of vote only". This is a restrictive clause and has been enacted to keep up the purity of elections, so that there should not be even the semblance of interference by the Government servants in the conduct of election. This is the golden thread which has been dexterously inter-woven into the entire web of the election law. Provision contained in Section 123(8) of the Act which forbids a candidate from obtaining or attempting to obtain or procure any assistance from any person serving under the Government is a unique enactment which finds no parallel throughout the world. This is the reason why the whole world has been astonished at the great success achieved by our Government in running the last elections in the country. I hold that subscribing to the nomination papers of respondent No. 1 by Daulat Ram ad Moti Ram servants of the Postal Department falls within the ambit of Section 123(8) of the Act and respondent No. 1 is clearly guilty of obtaining assistance from these two persons in the conduct of elections. In this view of the matter the election of respondent No. 1 is liable to be declared void without the necessity of finding whether the result of election was thereby materially affected or not. In the result, therefore, I make an order under Section 98 of the Representation of the People Act declaring the election of the returned candidate Shri Padam Dev respondent No. 1 to be void.

To the question of disqualification of respondent No. 1 under Section 140 of the Representation of the People Act I have given my anxious and careful consideration. In section 140 of the Act the word used in "shall". It is mandatory in character. The Legislature thought it fit to impose such disqualification for the purity of election which is the central theme throughout the Act, if I had discretion in the matter I would have placed a long catalogue of services rendered by Shri Padam Dev, Respondent No. 1 in the national cause in one scale and his systematic course of obtaining assistance from a number of government servants in the other. In his evidence as R.W. 33 he admits that he got Moti Ram, Daulat Ram, Phina Das and Sham Lal, all Government servants to sign his nomination paper. He further admits: "I knew that the aforesaid four men were in service. I knew that they were in Government service." Considering the pros and cons I would have exercised my judicial discretion one way or the other. But, the law as it stands, leaves no discretion to me in this matter. Under Section 99(1) (a), I record a finding that the corrupt practice of obtaining assistance of Government servants falling under Clause (8) of Section 123 is proved to have been committed by respondent No. 1, Shri Padam Dev. This will entail on him disqualification under Section 140 of the Representation of People Act. I, accordingly, direct that he will be disqualified under that Section for a period of 6 years from the date of this order.

As the petitioner succeeds only on one part of issue No. 1 that is assistance by Government Servants, Daulat Ram and Moti Ram and has not been able to substantiate his other allegations contained in the petition, I leave the parties to bear their own costs.

SIMLA:

The 23rd May, 1953.

(Sd.) DAULAT RAM PREM, B.A., LL.B.,

Senior Advocate, Supreme Court,

and Member, Election Tribunal,

Himachal Pradesh, Simla.

*Final order of the Tribunal.*

In accordance with the majority judgment, the petition fails and is hereby dismissed. Shri Satya Dev petitioner is directed to pay Rs. 700 as costs to Pt. Padam Dev respondent No. 1.

## ANNOUNCED

(Sd.) JAGAN NATH BHAGAT, Chairman.

(Sd.) DAULAT RAM PREM, Member.

(Sd.) TEJ SINGH VAIDYA, Member.

The 23rd May, 1953.

[No. 19/14/52-Elec.III/8550.]

**S.R.O. 1193.**—Whereas the election of Shri Madan Mohan, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Ranikhet (North) constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Hari Datt, son of Shri Padma Datt, Village Kande, Patti Bichalla Dora P.O. Bitholi, Tehsil Ranikhet;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

## BEFORE THE ELECTION TRIBUNAL AT BAREILLY

PRESENT,

Shri D. S. Mathur, I.C.S.—Chairman.

Shri D. R. Misra,—Member.

Shri J. K. Kapoor,—Member.

## ELECTION PETITION NO. 171 OF 1952

Shri Hari Datt,—Petitioner.

*Versus.*

1. Sri Madan Mohan,
2. Sri Jodha Singh,
3. Sri Ram Singh,—Respondents.

Sri Banwari Lal Agarwal, Advocate, assisted by Sri Harish Chandra Joshi; Sri Jai Duttawalia and Sri P. D. Sati appeared for the petitioner.

Sri Satish Chandra Khare, Advocate, along with Sri Man Mohan Lal Mathur, Advocate, Sri Purna Nand Upadhyaya, Advocate; and Sri Jatindra Mohan Vakil appeared for Sri Madan Mohan, respondent No. 1.

Sri Harish Chandra Varma for Sri Ram Singh, respondent No. 3.

## JUDGMENT

This election petition was filed under section 81 of the Representation of the People Act 1951 (Act XLIII of 1951) (hereinafter referred to as the 'Act') by Sri Hari Datt who was a candidate for election to a seat in the U.P. Legislative Assembly held in February 1952, for Ranikhet (North) Constituency No. 11.

The petitioner along with the respondents and one Sri Kundan Singh deceased was a duly nominated candidate for the above said election. Sri Kundan Singh died before the election petition was filed.

The polling for the above said constituency took place on the 18th and 21st February 1952, and the votes were counted on the 24th February, 1952. Sri Madan Mohan, respondent No. 1, secured 7785 votes; Sri Hari Datt petitioner 7710 votes, Sri Jodha Singh 3544 votes and Sri Kundan Singh 881 votes. The result of the election was declared that very evening (24th February 1952) and Sri Madan Mohan, respondent No. 1, was declared duly elected.

Shri Hari Datt filed this election petition with the allegations that at the time of counting of votes the number of votes for each polling booth was duly noted in form No. 14 prescribed under the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951; that there occurred a mistake in totalling the figures of votes of the petitioner as recorded in form No. 14 and the petitioner's total was short by 80 votes; that as the counting was over by 9 P.M. on 24th February, 1952 the petitioner could not represent to the Returning Officer about this inaccuracy; that on the next date, i.e. 25th February, 1952, the petitioner presented an application to the Returning Officer to retotal the votes secured by the petitioner and recorded in Form No. 14, but the Returning Officer rejected the application as the result had already been announced and communicated to the authorities; that the Returning Officer on reconsidering the matter found that a clerical mistake had crept in totalling the votes of the petitioner; that the correct number of votes polled for the petitioner was 7790 i.e. 5 votes in excess of the votes secured by Shri Madan Mohan; and that the petitioner having obtained majority of votes was entitled to be declared duly elected. It was, therefore, prayed that the election of Sri Madan Mohan be declared void and the petitioner declared duly elected.

Only Sri Madan Mohan, respondent No. 1, contested the election petition, and also filed a Recrimination under section 97 of the Act. His case as set out in the written statement and the Recrimination, is that the result of the election was duly and properly declared by the Returning Officer after the votes counted and totalled by him for various candidates had been accepted as correct by the candidates, their Agents and Polling Agents, all of whom were present at the counting; that one of the Polling stations in Rani Khet (North) Constituency of U.P. Legislative Assembly was at Bounli, situated in Talla Dora Patti, where polling was held on 18th February 1952, that simultaneously with the polling for the U.P. Legislative Assembly the Polling for the Parliamentary Constituency of North-East Almora for the House of People was also going on at the same time at the above said polling station; that the polling officer wrongly issued ballot papers meant for use in the Parliamentary Election to the voters who went to vote for State Assembly and these voters cast their votes through ballot papers meant for House of People in the boxes meant for Legislative Assembly; that such ballot papers cast in favour of Sri Madan Mohan, respondent No. 1 numbered 57 at the above said Polling station, while those cast in favour of Shri Hari Datt, petitioner numbered only 13, that all these votes were wrongly rejected by the Returning Officer at the time of counting; that a similar mistake had occurred at Syalde polling station of this very constituency but all those votes were regularized by the Election Commission; that if the votes cast at Bounli polling station, situated in Talla Dora Patti, and illegally rejected by the Returning Officer were taken into account, the respondent No. 1 would have obtained a still bigger majority; and that in any case the applicant has secured a majority of votes over the petitioner.

Respondent No. 2 Sri Jodha Singh did not turn up to file any written statement and the case proceeded *ex parte* against him.

On behalf of Sri Ram Singh, respondent No. 3 who had withdrawn from the election before the prescribed date, a written statement was filed on 6th September, 1952. In this written statement new points were raised which were not contained either in the Election Petition of Sri Hari Datt or in the recrimination of Sri Madan Mohan. It, therefore, was ordered on 28th November, 1952, that respondent No. 3 could take such pleas by election petition only and not having done so, his pleas could not be the subject matter of issues (*vide* Annexure A). After that respondent No. 3 ceased to take interest in these proceedings and remained absent throughout. At this stage it may be mentioned that in the replication the petitioner raised a fresh plea, regarding postal ballot papers, but he was not permitted to take new points not already set out in the petition paras. 13 to 19 of the replication were consequently ordered to be struck off (*vide* Annexure B).

On the pleadings of the parties the following issues were framed:

#### Issues

1. Was there any mistake in counting of ballot papers on 24th February 1952 as alleged by the petitioner? If so, its effect?
2. Is the petitioner estopped from raising the present objections when he did not file any objection at the time the result of the election was declared?
3. Can the result of the retotalling be acted upon and the result of the election modified on the basis of such retotalling?
4. Were the ballot papers of the House of People issued by mistake for the ballot papers of the U.P. Legislative Assembly at booth No. 1 of Bounli Polling Station situated in Talla Dora Patti?

5. If so, can the ballot papers of the House of People found in the ballot boxes of the U.P. Legislative Assembly be taken into consideration in determining the votes cast in the present election?

6. Is respondent No. 1 estopped from taking up the plea in the present election petition regarding the rejection of the ballot papers of the House of People found in the ballot boxes of the U.P. Legislative Assembly?

At an early stage, before the framing of issues, the petitioner had raised an objection to the notice of Recrimination being defective in that it was not verified as required under the law. No issue was framed but the objection was disposed off as per orders contained in Annexure 'C'.

#### FINDINGS

**Issue No. 1.**—It is the admitted case of the parties that counting of votes cast at different polling stations of Ranikhet (North) Constituency for the U.P. Legislative Assembly took place on 24th February, 1952. It is also not disputed that the polling agents, counting agents and the candidates were present in the Hall at the time of counting and that as the counting was going on the totals of the votes cast at each booth of a polling station were announced in the presence of the candidates and their polling and counting agents, and were recorded in Form No. 14. It is also an admitted fact that after the votes cast in favour of different candidates at each booth of every polling station had been noted in Form No. 14 totalling was done, and the result of election declared after the totals of different candidates had been accepted as correct by the candidates, their Agents and counting Agents present at the time of counting and no objection was raised thereto by any one.

The petitioner, Sri Hari Datt, has alleged in his statement on oath that although he had accepted his total as correct on the night of 24th February, 1952, still he was informed by his counting agent nearabout midday on 25th February, 1952, that there was mistake in totalling. This is a deviation from his case in election petition, from which it appears that he came to know the mistake in the night of 24th February but did not take any step as it had become late the counting of votes being completed at 9 P.M. He further deposed that he got the total checked by several persons and when he was satisfied that the correct total should have been 7790, he moved an application before the Returning Officer for retotalling, and that the application was rejected. Sri Hari Datt has admitted that he had made his own notes of the votes cast in his favour boothwise and that it was from these notes that he discovered the mistake on the next day. We fail to understand why these notes were not put in evidence by the petitioner. The totalling was done by the Returning Officer and also by the candidates or their counting agents simultaneously and it is very surprising that a mistake which was committed by the Returning Officer was also committed by the petitioner and his counting agent.

The Returning Officer, Sri Altaf Husain (P.W. 6), admitted that after the announcement of the result the papers of the election were kept in the treasury and all the important papers were sealed by him. Further on, Sri Altaf Husain stated that after he had rejected the application (Ex. A1) of Sri Hari Datt for retotalling, he retotalled the votes cast for the petitioner as noted in Form No. 14 relating to this constituency in order to satisfy himself. After the result had been announced and the election papers had been sealed, they should not have been opened by the Returning Officer, more so in the absence of the parties or any one of them. In his cross-examination the Returning Officer admitted that so far as he could remember he has sealed all the papers and ballot papers and that he retotalled the votes in the absence of the parties. Sri Madan Mohan (D.W. 1) in his statement has stated that at about 9 P.M. on 25th February 1952 he received a telephonic message from the Returning Officer and when he came to see the Returning Officer he found the election papers spread on the table before the Returning Officer and the petitioner was present there, that the Returning Officer told him that there was mistake in the total and that he had opened the papers to detect the mistake. The petitioner (P.W. 1) stated that he had not moved any application for inspection of Form No. 14. He also stated that the Returning Officer had summoned Sri Madan Mohan respondent also, but he was late in arriving and the Returning Officer had shown Form No. 14 to Sri Madan Mohan respondent and had asked him to check up the total. This statement of the petitioner supports the statement of Sri Madan Mohan, respondent No. 1, and shows that the election papers were opened by the Returning Officer in the absence of Sri Madan Mohan, that both the petitioner and Sri Madan Mohan were summoned by the Returning Officer and that when Madan Mohan arrived he found the election papers opened and petitioner present near the Returning Officer.

Whatever may have been the true facts, this much is clear that the Returning Officer had broken the seals and opened the papers without any lawful authority after having sealed them and after declaring the result of election of Ranikhet

(North) Constituency. This act of the Returning Officer was, in our opinion, rather indiscreet and not warranted by any provision of the Act, or the rules framed thereunder.

Form No. 14 in original was before us and from this it appears that at the bottom of each page the total was written and afterwards these totals were scored out and other totals written. In these circumstances that sanctity which attaches to an official record cannot be given to this document.

Jiwan Lal Shah (D.W. 6), an extra-clerk and incharge of election work, stated that 20 blank forms of Form No. 14 were received and although there were orders that account of forms should be maintained still he did not maintain any account of Form No. 14. He also said that he gave these blank forms of Form No. 14 to the Reader of the Returning Officer on the date of counting. The Reader of the Returning Officer, Sri Tilok Singh (P.W. 3), in his cross-examination stated that he did not receive the blank form No. 14 from Jiwan Lal Shah, election clerk. He could not say who received those blank forms and how many such blank forms were with him or with the Returning Officer after the declaration of the result on 24th February 1952. He admitted that Form No. 14 of any candidate was not cancelled nor was any such form destroyed. He also could not give any account of Form No. 14. This witness also admitted that there was tampering with Form No. 14 of the petitioner, copy of which is Ex. 3, by stating that the total 6862 on page 3 was not in his handwriting, as the last three figures 682 were overwritten and also by stating that the total 6862 was not written in his presence. He also could not say when the figures in red were written and by whom. From the mere fact that no account had been maintained of Form No. 14, it cannot be ascertained as to whether the original of Ex. 3 had been changed or not at any stage after the declaration of the result of election. The case for the respondent was that the original of Ex. 3 had been tampered with. In the circumstances enumerated above we think, no implicit reliance can be placed on Form No. 14 of the petitioner (original of Ex. 3).

There is one thing more which may be mentioned by the way in this connection. The petitioner in his statement stated that the mistake in totalling was due to the fact that he had made a mistake in totalling the votes cast at the 3-booths of Bansull Sera polling station. But from the original of Form No. 14 it appears that the mistake had occurred somewhere else. According to the petitioner, the mistake was on the first page of Form No. 14, while according to the original Form No. 14, the mistake in totalling occurred on the third page. This is a strange coincidence.

The petitioner did not make an attempt to prove the mistake in totalling by applying for recounting of the ballot papers.

In view of the facts enumerated above the Tribunal is of opinion that the petitioner has failed to satisfactorily establish that there was in fact a mistake in totalling. In view of the fact that the Returning Officer had opened the election papers in the absence of the parties and against the rules, and has given his statement which is not supported by either the petitioner or the respondent No. 1, we think that no implicit reliance can be placed on his statement that he discovered the mistake on retotalling of votes cast in favour of the petitioner as noted on the original of Ex. 3.

We, therefore, find this issue in the negative.

*Issue No. 2.—This issue was not pressed.*

*Issue No. 3.—This issue does not arise.*

*Issue No. 4.—*It is admitted by the petitioner (P.W. 1) in his statement that at Bounli polling station ballot papers for the House of People were found in the ballot boxes of different candidates for the State Assembly and that similar mistake was committed at another polling station (Syalde) also. The petitioner's counsel in his statement under order X C.P.C. dated 3rd November 1952 admitted that the Returning Officer had rejected the Parliamentary ballot papers found in the ballot boxes of the State Assembly at Bounli polling station and that the number of such rejected ballot papers cast in favour of the petitioner was 13 and of those in favour of respondent No. 1, 57. The Returning Officer (P.W. 6) in his cross-examination stated that Parliamentary ballot papers were found in the Assembly ballot boxes of Syalde polling station and also of Bounli polling station. Sri Prem Chand Joshi (D.W. 4) was Presiding Officer at Bounli polling station where election for Ranikhet (North) Constituency of U.P. Legislative Assembly and North-East Almora Constituency of House of People were conducted. He stated that at Bounli polling station two kinds of ballot papers were issued to him, one for the House of People and the other for the U.P. Assembly and that he distributed both kinds of ballot papers to the three polling officers of the three booths of that polling station

Further on, the witness stated that the Polling Officer of booth No. 11 had informed him that by mistake some ballot papers of the House of People were issued to electors while casting votes for the U.P. Legislative Assembly and that they had cast their votes with these ballot papers in the boxes meant for U.P. Assembly. From the statement of this witness it appears that by mistake ballot papers meant for casting votes for House of People were issued in place of those meant for use in casting votes for the U.P. Legislative Assembly.

It cannot be gainsaid that the election to the House of People and to the Legislative Assembly were being conducted simultaneously so that at every booth within a polling station there were two compartments, one meant for casting votes for Legislative Assembly and another for casting votes for the House of People. The arrangement was such that when any voter entered any booth he brought with him his identity slip and then a ballot paper for Legislative Assembly was issued to him. After casting his vote in one compartment he had to go out of that compartment when another clerk issued him ballot paper for House of People and then the voter was to cast his vote in the other compartment meant for House of People and after that he had to go out of the booth. It also cannot be denied that in one polling station there used to be one or more than one booth and each booth used to have two compartments. There was one Presiding Officer for every polling station and one polling officer for every booth and separate sets of clerks at each booth. The Parliamentary ballot papers and the Legislative Assembly ballot papers were issued to the Presiding Officer, and the Presiding Officer distributed both kinds of ballot papers among the polling officers and the polling officers gave one set of ballot papers to one clerk and another set of ballot papers to another clerk. Therefore, if the Polling Officer by mistake gave Parliamentary ballot papers to the clerk who was to issue ballot papers for the Legislative Assembly, the voter for the Legislative Assembly would get the ballot paper meant for House of People and would cast his vote in the ballot box meant for U.P. Legislative Assembly. The only difference in the Parliamentary and Assembly ballot papers was that in one there was a chocolate bar on the left margin while in the other, there was so to say a green bar. In our opinion, it was rather difficult, if not impossible, for ordinary voters or even the Polling Clerks to appreciate the mark of distinction between the Parliamentary and Assembly ballot papers. Both kinds of ballot papers are on the file. The Parliamentary ballot papers are Ex. A-20 to A-100 and the Legislative Assembly ballot paper is Ex. A-101. Both these ballot papers are of the same size, colour and appearance, with the only difference that in the case of Parliamentary ballot papers the bar on the left margin has got a bit different shade from the bar in the Legislative Assembly ballot paper. Of course, the serial numbers of the two kinds of ballot papers are different. The mistake could, therefore, very easily be committed by anybody who had not seen these ballot papers from before very minutely. Sri Prem Chand Joshi (D.W. 4), Presiding Officer of Bounli polling station, stated that Parliamentary ballot papers of which the serial numbers were A/25 150001 to A/25 152500 and Assembly ballot papers Nos. A/33 666001 to A/33 668500 were issued to him for use at Bounli polling station. From Exs. A-4, and A-17 to A-19 and also Ex. A-11 it appears that from the ballot boxes of different candidates for the Legislative Assembly at Bounli polling station of Ranikhet (North) Constituency, Parliamentary ballot papers Nos. A/25 150101 to A/25 150181 were recovered. These ballot papers are Exts. A-20 to A-100. This clearly shows that one packet of 100 ballot papers of Parliamentary ballot papers was issued by mistake by the polling officer to the clerk who was to issue ballot papers for U.P. Legislative Assembly and the voters cast these ballot papers in the Legislative Assembly ballot boxes. From the Electoral Roll Ex. A-16, which is of booth No 1 of Bounli polling station, it is clear that these Parliamentary ballot papers were issued to voters when they went to cast their votes for Legislative Assembly. We are, therefore, of opinion that the ballot papers of the House of People were by mistake issued for the ballot papers of the U.P. Legislative Assembly at booth No. 1 of Bounli polling station.

The issue is decided in the affirmative.

**Issue No 5.**—It was contended for respondent No. 1 that Parliamentary ballot papers found in the ballot boxes meant for the U.P. Legislative Assembly at Syalde polling station were regularized by the Election Commission, but such ballot papers found in the Legislative Assembly boxes of different candidates of booth No. 1 of Bounli polling station were rejected by the Returning Officer at the time of counting; and that this should not have been done, at any rate the Tribunal should take such rejected votes into consideration and count them as valid votes of each candidate in whose box such ballot papers were found at the time of counting. Reliance is placed by the Respondent on the case of Sri Gidwani Chothram Partabrai *versus* Aganani Thakurdas Chuharmal and others decided by the Election Tribunal of Bombay on 11th August, 1952, and reported at page 2016 of the *Gazette of India Extraordinary*, Part I, Section 1, dated August 25, 1952, in Election Petition No. 5 of

1952, which was quoted with approval in the Judgment of Election Petition No. 39 of 1952, Narananayan Goswami *versus* Dr. Homeswar Deb Choudhury and others reported at page 1066 of the *Gazette of India Extraordinary*, Part II, Section 3, of 27th December 1952, and was also referred to at page 678 of the *Gazette of India Extraordinary*, Part II, Section 3, dated 4th March 1953, in the judgment of the Election Tribunal, West Bengal, in Election Petition No. 122 of 1952, Balal Lal Das Mohapatra *versus* Trailakya Nath Pradhan and others. Reference was also made to an old case decided under the previous law, by the Election Commission, Bareilly, in case of Abdul Wajid *versus* Said Ahmad, reported at page 610 of Election cases, 1935 by Sen and Poddar.

It was also urged, on behalf of the respondent, that the provisions of rule 47(1)(c) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, were directory and not mandatory and therefore the Returning Officer (who had got such ballot papers of Syalde polling station regularized) was not bound to reject such ballot papers found in the ballot boxes of booth No. 1 of Bounli polling station and should have counted them as valid votes.

Quite a contrary argument has been put forward on behalf of the petitioner; and it is contended that rule 47(1)(c) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, is of a mandatory nature and that the Returning Officer was justified in rejecting the Parliamentary ballot papers found in the Assembly ballot boxes. Reliance is placed upon the majority view of the Election Tribunal, Hoshangabad, in Election Petition No. 180 of 1952, Hari Vishnu Kamath *versus* Syed Ahmad Syed Isak and others, decided on 27th March 1953, and reported at page 1087 of the *Gazette of India Extraordinary*, Part II, Section 3, dated April 15, 1953. It was further urged that even the Tribunal could not regularize or treat such votes as valid ones.

In view of the interpretation that we are giving to rule 47(1)(c) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, it is not necessary for us to consider in detail the different cases decided by the Election Tribunals and to which a reference has been made by the parties to this Election Petition. We would, however, point out that we cannot subscribe to the view of the Bombay Tribunal that the provisions of rule 47 are simply directory and not mandatory. Rule 47 was made under the provisions of section 169 of the Representation of People Act 1951 (Act XLIII of 1951); and the rules made under the provisions of the Act command the same sanctity as the provisions of the Act itself unless they are repugnant to the Act under which they are made. We are, therefore, of opinion that provisions of rule 47(1)(c) are as mandatory as the provisions of the Representation of People Act itself. This rule gives grounds for rejections of ballot papers. Clauses (a), (b) and (d) of rule 47(i) have got no bearing on this case and so need not be considered. Rule 47(1)(c) says that "a ballot paper contained in a ballot box shall be rejected if it bears any serial number or mark different from the serial numbers or marks of ballot papers authorized for use at the polling station or the polling booth at which the ballot box in which it was found was used." It was under the provisions of this rule that the Parliamentary ballot papers found in the ballot boxes of Legislative Assembly of different candidates at Bounli Polling Station, booth No. 1, seem to have been rejected. On behalf of the petitioner it was said that Parliamentary ballot papers were not authorized for use at the polling station or the polling booth. It was also argued that the words "polling station" used in this rule in fact mean "polling compartment". We think that the argument advanced for the petitioner has got no force. The words of a section or rule have to be given their plain meaning. No new words are to be imported, and it is only in cases where there appears to be an ambiguity that a meaning different to the plain meaning can be given. Further if the section or rule is capable of two interpretations, the one which is not penal and is more equitable and just is to be adopted.

The learned counsel for the petitioner argued that the words "authorized for use at the polling station" meant authorized for use for a particular election at the polling compartment. For such an interpretation the words "at an election" after the word "use" will have to be introduced and the words "polling station" will have to be changed into "polling compartment." The framers of the rule had in view that a polling compartment was different from a polling station. Rule 18 of these rules runs as follows:—

- (1) Each polling station and, where a polling station has more than one polling booth, each such polling booth shall be furnished with a compartment (referred to in these rules as a "polling compartment") in which electors, can, one after another, cast their votes screened from observation, and no elector shall be allowed to enter such polling compartment when another elector is inside the same for the purpose of recording his vote."

This clearly shows that the framers of the rule had in their mind the distinction between "polling station" and a "polling compartment". It is also clear that the framers of the rule never intended to incorporate in this rule the words "authorized for use at an election." The election for the Legislative Assembly and the House of People were being conducted simultaneously at each polling station and if the framers of the rule had in their mind that the ballot papers meant for use in the House of People election should not be used for Legislative Assembly election and if so used, would be invalid, they would have clearly expressed it in the wordings of this rule. The words of rule 47 (1)(c) are not at all ambiguous. It clearly lays down that ballot papers authorized for use at a polling station should be used there and if any ballot paper which bore a serial number or mark different from the serial numbers or marks authorized for use at that polling station was to be found in a ballot box used at that polling station, it shall be rejected. In the present case we find that two sets of ballot papers, one, Parliamentary ballot papers and the other, Legislative Assembly ballot papers, were issued to Presiding Officers and the Presiding Officers issued both sets of ballot papers to Polling Officers who distributed them to the Polling Clerks to be issued to the voters. Thus it is clear that both kinds of ballot papers were authorized for use at a particular polling station. If by a *bona fide* mistake of a polling Officer, the Parliamentary ballot papers were given to the clerk who was to issue ballot papers for Legislative Assembly, it cannot be said that such ballot papers were not authorized for use at that polling station. On the other hand, it can quite reasonably be argued that both kinds of ballot papers were authorized for use at that polling station.

To the most it can be said that Rule 47(1)(c) is capable of two interpretations, firstly, the ballot papers authorized for use at the Polling Station are those which were means for that particular Election, and secondly, they include all the ballot papers issued for use at that Polling Station, whether for Election to the House of People or to the U.P. Legislative Assembly. The first interpretation would, as will appear from the subsequent part of this judgment, be penal and less reasonable. Consequently, in all fairness it will be proper to give the second interpretation, i.e. that both kinds of ballot papers should be deemed to have been authorized for use at the polling station.

We have already noted above that the two kinds of ballot papers were similar in all respects except that they bore different serial numbers and there was slight difference in the colour of the bar at the left hand margin. An elector who has got a right to vote and if he is given a wrong ballot paper on account of *bona fide* mistake of a clerk will lose his valuable right to vote, given to him under the Constitution of India, if such a vote is declared invalid or is rejected. Such a valuable right cannot be taken away under any circumstances unless otherwise disqualified. Thus the interpretation which the petitioner wants us to give to Rule 47(1)(c) would in many instances prove to be penal and unreasonable and hence cannot be adopted. We are, therefore, of opinion that ballot papers of the House of People found in the ballot boxes of the U.P. Legislative Assembly at the Bounli polling station, booth No. 1, should be taken as valid votes.

There is one thing more which need be mentioned in this connection. Ex. A-3 is a copy of a telegram from the Election Commission, New Delhi, to the Returning Officer, Ranikhet. This telegram runs as below:-

"... .... ..In modification of directions of 20th September 1951 Commission approves use of both varieties of ballot papers for either election in booth No. 2 of Syalde Chaukote Bichala polling Station No. RP-144 and LA 19 of Parliamentary Constituency No. 4 and Assembly constituency No. 11 Uttar Pradesh. Treat accordingly ballot papers used at said booths as valid irrespective of colour of bar."

This copy of the telegram shows that the Election Commission validated the votes of those electors who were given Parliamentary ballot papers and who cast them in Legislative Assembly ballot boxes at Syalde polling station. Neither party was able to refer us to any rule or section of the Act which authorizes the Election Commission to regularize an invalid vote. It appears that the Election Commission had purported to act under Article 324 of the Constitution of India or under Rule 28 of the Representation of the People (Conduct of Election and Election Petitions) Rules 1951. Article 324 of the Constitution provides that the conduct of all Elections to Parliament and to the Legislature of every State shall be vested in the Election Commission. The conduct of Elections cannot mean and cannot give the power to the Commission to declare invalid votes as valid ones. Rule 28 cannot also be of

any assistance as it contemplates a decision or order of the Election Commission prior to the actual polling. This rule runs as below:—

"The ballot paper to be used for the purpose of voting at an Election to which this Chapter applies shall contain a serial number and such distinguishing marks as the Election Commission may decide."

Thus if the Parliamentary ballot papers authorized for use at a polling station were issued to an elector for being cast in Legislative Assembly ballot box at that very polling station, and if the ballot paper so cast could be rejected under rule 47(1)(c), the Commission had no authority to validate such a vote. In such a case all the Parliamentary ballot papers found in the Assembly ballot boxes at Syalde polling station should have been rejected.

In this connection it is urged on behalf of the petitioner that the respondent No. 1 cannot at this stage be allowed to challenge the directions of the Election Commission validating certain votes at Syalde polling station and also the order of the Returning Officer in treating such votes as valid ones in view of the fact that this plea was not taken in the written-statement nor in the recrimination. It is true that a reference to this plea was not specifically made in the written-statement or in the recrimination but there was a general clause pleading that in any case the respondent had been elected by a lawful majority of votes. However, this point is not of any importance as, in our opinion, the order of the Election Commission was correct and the Parliamentary ballot papers found in the Assembly ballot boxes in Booth No. 1 of Bounli polling station should not have been rejected.

If the Parliamentary ballot papers found in the Legislative Assembly ballot boxes both at Syalde and Bounli polling stations are rejected or accepted, the result of election would remain the same, as in either case the respondent No. 1 would get majority over the petitioner.

Issue is decided in favour of respondent No. 1.

**Issue No. 6.**—We have heard the arguments of the learned counsel on either side and are of opinion that respondent No. 1 cannot be estopped from taking up the plea regarding the rejection of ballot papers of the House of People found in the ballot boxes of U.P. Legislative Assembly. Respondent No. 1 could not possibly know that such a mistake had been committed at Bounli polling station. The polling Officer on duty at booth No. 1 of Bounli polling station, as is clear from the evidence on the record, did not apprise the Presiding Officer of the correct situation and the Presiding Officer at Bounli polling station did not by any separate writing inform the Returning Officer of the mistake that had been committed at booth No. 1 at Bounli polling station. The respondent No. 1, therefore, could not know this mistake till the ballot boxes had been opened and the ballot papers taken out. It is in evidence that at the time of counting of the ballot papers of Bounli polling station Sri Madan Mohan, respondent No. 1, had raised an oral objection regarding rejection of such ballot papers of Bounli polling station. The respondent No. 1, therefore, at the very first opportunity had raised that objection. He did not take any further step to get such ballot papers regularized because even without such votes being counted he had been declared duly elected and he had no opportunity to raise this objection till an election petition was filed. It is, therefore, clear that the respondent No. 1 took the plea at the proper opportunity and we think he is not estopped from raising this plea at this stage.

The issue is decided in the negative.

#### ORDER

In view of our findings on the above issues, we are of opinion that from what ever aspect the case may be considered the petitioner is not entitled to succeed. Even if it be presumed that there was mistake in totalling, the respondent would have majority of votes in his favour, as we are of opinion that Parliamentary ballot papers cast in Legislative Assembly ballot boxes of different candidates at Syalde and Bounli polling stations were legal and valid votes of every candidate. The petition is, therefore, rejected and the recrimination is allowed. Sri Madan Mohan, respondent No. 1, shall get Rs. 500 by way of costs from the petitioner, who will bear his own costs.

(Sd.) D. S. MATHUR, I.C.S., Chairman.

(Sd.) D. R. MISRA, Member.

(Sd.) J. K. KAPOOR, Member.

BAREILLY;

The 27th May 1953.

## ANNEXURE 'C'

**B 29.**—Section 97 (2) of the Representation of People Act clearly lays down that a notice referred to in sub-section (1) thereof shall be signed and verified in the manner prescribed, i.e. as laid down in Order VI Rule 15 C.P.C. In the present case the statement accompanying the notice had been verified and not the notice itself. Thus the notice was not verified in accordance with the law. However, an application has been moved for permission to amend the notice by verifying its contents.

It is a settled law that omission or defect in verification only is an irregularity curable by amendment and is not a ground for rejection or dismissal. It is further a well settled law that the amendment of the pleadings by way of the removal of such a defect can be allowed at any stage. The learned counsel for Sri Hari Dutta, petitioner, has on the other hand urged that Order VI Rule 15 C.P.C. will not apply to the present recrimination application on the ground that there is a specific provision contained in section 90(4) of the Representation of the Peoples Act which authorises the Tribunal to dismiss an election petition which did not comply with the provisions of sections 81, 85 and 117 of the Act. Under section 83 (1) an election petition has to be verified in the manner laid down in the Civil Procedure Code. Thus the Tribunal has the power to dismiss an election petition, and also a recrimination, for improper verification of the document. But this power has to be exercised judicially and with due caution so that injustice is not done to any of the parties. The word 'may' used in section 90(4) of the Act is of great significance and would clearly indicate that the Tribunal has the power to allow amendment of the pleadings at any stage.

In the present case the defect is not of a serious nature and appears to have been committed in good faith by not properly understanding the provisions of section 97 of the Representation of Peoples Act. The mistake being of a technical nature which will not in any way prejudice the other party is such which the applicant should be allowed to rectify even at this late stage.

The application for amendment of the notice under section 97 of the Representation of the Peoples Act is hereby allowed and Sri Madan Mohan is permitted to properly verify the notice.

(Sd.) D. S. MATHUR, I.C.S., Chairman.

(Sd.) D. R. MISRA, Member.

(Sd.) J. K. KAPOOR, Member.

The 3rd November 1952.

## ANNEXURE 'A'

In his written statement Sri Ram Singh, respondent No. 3, has taken up many additional pleas, which were not at all mentioned in the election petition or in the written statement or recrimination of the respondent No. 1. A perusal of the representation of the Peoples Act, 1951, indicates that a respondent can either support the petitioner or the returned candidate. If he were to take up fresh grounds, it was necessary for him to file an election petition, which could be heard by the Tribunal as a separate petition. In the circumstances, the new points raised by the respondent No. 3 can be disregarded while framing issues.

(Sd.) D. S. MATHUR, I.C.S., Chairman.

(Sd.) D. R. MISRA, Member.

(Sd.) J. K. KAPOOR, Member.

The 28th November, 1952.

## ANNEXURE 'B'

Heard the counsel for the parties present.

The Tribunal is of opinion that in the replication the petitioner cannot be allowed to add fresh grounds, which he could have taken up in the Election petition. Further, if the question of the Postal Ballot papers is allowed to be raised, it is possible that relief to be granted by the Tribunal may be different to that prayed for in the election petition. Paras 13 to 19 of the replication, paper No. 25B, could not thus be raised and they are ordered to be struck off from the replication. The counsel for the petitioner should amend the replication accordingly.

(Sd.) D. S. MATHUR, I.C.S., Chairman.

(Sd.) D. R. MISRA, Member.

(Sd.) J. K. KAPOOR, Member.

Election Tribunal, Bareilly.

The 28th November, 1952.

[No. 19/171/52-Elec.III/8579.]

**S.R.O. 1194.**—Whereas the election of Shri Jagdish Narain Singh, as a member of the Legislative Assembly of the State of Bihar, from the Mokamah constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jamuna Nandan Prasad Sinha, son of Shri Awadh Nandan Prasad Singh, Village Samayagarh, P.S. Mokameh, District Patna;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### ELECTION TRIBUNAL, PATNA

##### PRESENT:

Shri Basu Prasad, Retired District Judge—Chairman.

Shri Hargobind Prasad Sinha, Retired District Judge—Member.

Shri Aditya Narayan Lal, Advocate—Member.

#### ELECTION PETITION No. 38 of 1952.

In the matter of Election to the Bihar Legislative Assembly from Mokameh Constituency in the district of Patna. Shri Jamuna Nandan Prasad Sinha —Petitioner.

#### Versus

1. Shri Jagdish Narain Singh, Pleader S/O Gajadhar Prasad Singh, V. Barh, P.O. Barh.
2. Shri Kant Lal Singh, S/O Chhoti Singh, V. Barhanpur, P.O. Mokameh.
3. Shri Lachhmi Narain Singh, S/O Budhudash, V. Sarfraznagar, Kumhra, P.O. Sarmera.
4. Shri Shehnandan Prasad Singh, S/O Manghi Mahto, V. Choundi Barh, P.O. Barh.
5. Shri Shyambihari Prasad, S/O Awadh Bihari Kishore Prasad Singh, V. Sarmera, P.O. Sarmera.
6. Shri Dwarka Prasad, S/O Chaman Singh, V. Panchmahla, P.O. Mokamch
7. Shri Ramcharitar Raut, S/O Lacho Raut, V. Sarmera, P.O. Sarmera.
8. Shri Swami Parmanand, S/O Ram Ashram, V. Pokherper, P.O. Samyagarh.
9. Shri Chandrashekhar Prasad Singh, S/O Singheshwar Prasad Singh V. Muldiya Tola Mokameh, P.O. Mokameh.
10. Shri Sukhdeo Mahto, S/O Mahadeo Mahto, V. Sehra Batoura, P.O. Sarmera.
11. Shri Chiranjibi Singh S/O Beni Singh, V. Mokameh, Deorani Tola, P.O. Mokameh.
12. Shri Ramkrishun Singh, S/O Bohram Singh, V. Mokameh, P.O. Mokameh.
13. Shri Baleshwor Prasad, S/O Naurangi Dusadh, V. Hafizpur Karmour P.O. Barh.
14. Shri Mathura Singh, S/O Rambilash Singh, V. Danara, P.O. Bikram.
15. Shri Hari Mahto, S/O Ganour Mahto, V. Dhanakdoh Mokameh.
16. Shri Lachhmi Mahto, S/O Rama Mahto, Sarfraznagar Kumhra, P.O. Sarmera—Respondents.

#### FOR PETITIONER

1. Shri Awadhesh Nandan Sahay, Advocate.
2. Shri Indra Bhanoo Singh, Advocate.

#### FOR RESPONDENT No. 1.

1. Shri Balbhadrappa Prasad Singh, Advocate.
2. Shri S. N. Bharthuar, Advocate.

#### FOR RESPONDENT No. 16.

1. Shri Narendeshwar Prasad Sinha, Pleader

Shri Jamuna Nandan Prasad Sinha, who was a candidate for election to the Bihar Legislative Assembly from Mokameh Constituency in the district of Patna, has filed this election petition under section 81 of the Representation of the People Act, 1951, for declarations (a) that the election of the returned candidate, Shri Jagdish Narain Singh (Respondent No. 1), is void, and (b) that the election in the said constituency is wholly void.

The petitioner states that his name was entered as an elector in serial No. 604(a) of the Electoral Roll of Mokameh Constituency for the Bihar Legislative Assembly. He was duly nominated as a candidate for election to the Assembly from the said constituency and had filed two nomination papers [Ext. 1(23) and Ext. 1(24)]. In both the nomination papers, the proposer was Lakshmi Sinha and the seconder, Hriday Sinha; and both of them had been entered as electors in the Electoral Roll of that constituency. In one of the nomination papers, there was a clerical error inasmuch as the serial number of the seconder was not mentioned. In course of the scrutiny of nomination papers, the Returning Officer rejected both the nomination papers of the petitioner on the sole ground of omission of the serial number of the seconder in one of the nomination papers.

The petitioner contends that his nomination papers were improperly rejected and, as he possessed the confidence of majority of the electors of the Constituency and there was a very fair chance of his success at the election, the result of the election has been materially affected by the improper rejection of his nomination.

The election petition is resisted by the Respondent No. 1 who has filed a written statement contending that the petition is not maintainable either in law or on facts. that the nomination papers of the petitioner were rightly rejected by the Returning Officer, and that the result of the election has not at all been affected by the rejection of the petitioner's nomination papers. The Respondent No. 1 states that the first nomination paper of the petitioner suffered from a material defect inasmuch as the serial number of the seconder in the Electoral Roll of the Constituency was not stated therein. The above omission amounted to failure on the part of the petitioner to comply with the provisions of section 33 of the Representation of the People Act, 1951. He, further, states that the second nomination paper of the petitioner was rejected on the ground that the same proposer, who had proposed his first nomination paper, had also proposed his second nomination paper, thus rendering the second nomination paper invalid.

On the date when the trial opened, the Respondent No. 16 appeared and filed a written statement in which it is said that the assertion made in the election petition that the nomination papers of the petitioner purporting to bear the signatures of the proposer and the seconder bore the signatures of the persons entered in the Electoral Roll is not admitted. Other grounds of defence taken in that written statement are the same as those taken by the Respondent No. 1.

The following issues arise for determination.

#### ISSUES

1. Is the election petition maintainable?
2. Have the nomination papers of the petitioner been improperly rejected? If so, has the result of the election been materially affected by such rejection?
3. Is the election wholly void?
4. To what relief, if any, is the petitioner entitled?

#### FINDINGS

**Issue No. 1.**—This issue has not been pressed. We do not find any serious defect in the frame of the election petition. This issue is, therefore, answered in the affirmative.

**Issue No. 2.**—The petitioner, as has been stated above, presented two nomination papers [Ext. 1(23) and Ext. 1(24)]. The Returning Officer noted on the nomination papers the date and hour of the presentation. Both the nomination papers were presented on 24th November, 1951, at 11-50 A.M. It, thus, appears that both the nomination papers were filed simultaneously at one and the same time. The petitioner (P.W. 3) has made statement to the same effect in his evidence. The Returning Officer (P.W. 1) has, however, stated in his evidence that the two nomination papers were not filed at one and the same time, but one was filed a few seconds after another had been filed. The Returning Officer has tried to explain in his evidence the note he made in the order-sheet (Ext. 2)

that the two nomination papers were presented simultaneously by saying that the candidate was holding the two nomination papers in two hands and one was filed first and then, after a few seconds, another was filed. This explanation does not appear to us to be acceptable and the fact remains, as noted off the nomination papers and also on the order sheet, that the two nomination papers were presented simultaneously at one and the same time.

Section 36 of the Representation of the People Act, 1951, requires that the Returning Officer shall, on receiving the nomination paper, enter thereon its serial number and shall state the date and the hour at which the nomination paper has been delivered to him. In the present case, the Returning Officer noted the date and the hour of the presentation in the appropriate column at page 3 of the nomination papers [Ext. 1(23) and Ext. 1(24)], but he entered the serial number, namely, serial No. 64, in Ext. 1(23) only in the appropriate column. The column of serial number at page 3 in Ext. 1(24) was left blank. There are, however, two numbers, namely 17 and 18, written in red chalk on the first page of Ext. 1(23) and Ext. 1(24) respectively. From the evidence of the Returning Officer it appears that he put the number "17" on the nomination paper which, according to him, was first filed and the number "18" on the nomination paper which, according to him, was filed a few seconds later. The learned advocate for the Respondent No. 1 took pains to show that, truly speaking, Nos. 17 and 18 represented serial numbers of the two nomination papers and that altogether 54 nomination papers had been filed in this constituency. But those numbers were not entered in the appropriate column at page 3 of the nomination papers. The question on this point was put to the Returning Officer while he was in the witness box. It is, therefore, difficult to understand why and under what circumstances the two numbers, "64 and 17", were put on Ext. 1(23) and one number, "18", on Ext. 1(24). Be that as it may, it is evident that the Returning Officer did not enter the serial number in the appropriate column on the nomination paper, Ext. 1(24), in compliance with the requirement of section 36 of the Act. But the non-compliance with the above requirement was not, in our view, of any material consequence and did not render the nomination paper invalid.

On the date of scrutiny of the nomination papers, i.e. on the 26th November, 1951, the Returning Officer rejected the nomination paper [Ext. 1(23)] on the ground that the serial number of the seconder was not stated therein. He also rejected the other nomination paper [Ext. 1(24)] on a different ground, namely, that the proposer and the seconder in it were the same persons as the proposer and seconder in the nomination paper [Ext. 1(23)]. While rejecting [Ext. 1(24)], he observed that the nomination paper [Ext. 1(23)], on which serial number "17" was noted in red chalk, was the only nomination paper to be considered. We think that the Returning Officer was wrong in taking this view. The Returning officer should have also considered the other nomination paper [Ext. 1(24)] and should not have rejected it on the aforesaid ground.

Section 33(2) of the Representation of the People Act, 1951, provides that an elector can subscribe, as proposer or seconder, as many nomination papers as there are vacancies to be filled, but no more. Sub-section (7) of Section 33 says that a candidate can be nominated by more than one nomination paper for election in the same constituency. Section 36(7)(b) provides that, where a person has subscribed, whether as proposer or seconder, a large number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid. It has been argued on behalf of the Respondent No. 1 that as there was only one vacancy to be filled in this constituency, an elector could subscribe, as proposer or seconder, only one nomination paper. It has been, further, argued that, as Lakshmi Singh and Hirdoy Singh subscribed as proposer and seconder respectively on both the nomination papers, Ext. 1(23) and Ext. 1(24), the nomination paper which was first received was the only valid nomination paper. The learned advocate for the petitioner has, on the other hand, contended that the true meaning of section 33(2) is that a person can subscribe, as proposer or seconder, nomination papers of as many candidates as there are vacancies to be filled. It has been, further, contended that when several nomination papers of the same candidate proposed and seconded by the same set of persons, have been filed simultaneously, the question of one nomination paper being received first and the other nomination papers being received later, do arise. We have given a careful consideration to the provisions of section 33(2) and section 33(7) of the Act and we accept the contention of the petitioner that person can subscribe as proposer or seconder, nomination papers of as many candidates as there are vacancies.

Consistent with the schedule of the Act, we are inclined to interpret Section 33(2) as meaning that, if there is one vacancy to be filled, a person can subscribe, as proposer or seconder, nomination of one candidate only; if there are two vacancies, a person can subscribe as proposer or seconder, nomination of two candidates, but not more. But the section, in our view, does not mean that a proposer or seconder cannot subscribe to more than one nomination paper of the same candidate, if there is only one vacancy. The word "vacancies" occurring in section 33(2) is significant and is a pointer to the fact that the number of candidates whom an elector can propose or second depends upon the number of vacancies to be filled in that constituency. If an elector subscribes, as proposer or seconder, more nomination papers than one of the same candidate, he will be deemed to have subscribed in fact only one nomination paper. If all the nomination papers are in order, only one of them is to be considered and the rest are to be treated as superfluous. But if any of them is found to be defective, the other nomination paper subscribed by him in regard to the same candidate can be looked into. It is conceivable that, as a measure of precaution, a candidate sometimes gets the same proposer or seconder to subscribe in more than one of his nomination papers. The view taken by us of the true meaning of section 33(2) was exactly the view taken by the Election Tribunal, Delhi, in a recent case *Shri Hans Raj versus Shri Ram Singh*, reported in *Gazette of India, Extraordinary*, dated the 19th November 1952. Our attention has been invited to contrary views expressed by the Bhagalpur Tribunal in *Lakhan Lal Mishra versus Tribeni Kumar*, reported in *Bihar Gazette, Extraordinary*, dated the 5th February, 1953 and the Bhopal Tribunal in *Bijoy Singh versus Narbada Charan Lal*, reported in *Gazette of India, Extraordinary*, dated the 6th January, 1953. With great respect, however, we differ from the views expressed by the Bhagalpur Tribunal and the Bhopal Tribunal. Our conclusion, therefore, is that the nomination paper [Ext. 1(24)] cannot be deemed to be invalid on the ground that the proposer and the seconder in it are the same persons as those in the other nomination paper [Ext. 1(23)]. In view of this finding, it is not necessary to decide the question whether the two nomination papers, which were presented simultaneously, were also received simultaneously or at different times, because, as has been discussed above, they, in fact, constituted only one nomination paper as the candidate in both was one and the same person. The provisions of section 36(7) (b) have, therefore, no application to the facts of this case.

It has been also argued on behalf of the petitioner that the Returning Officer was wrong in rejecting the nomination paper [Ext. 1(23)] on the ground that the serial number on the Electoral Roll of the person subscribing as seconder was not stated therein. Section 33(1) of the Representation of the People Act, 1951, requires that a nomination paper shall be completed in the prescribed form. Column No. 13 of the prescribed form is intended for putting down "name of the seconder" and column No. 14 for putting down "serial number of the seconder in the Electoral Roll of the constituency". In the present case, serial number of the seconder was not inserted in column No. 14, although the name of the Electoral Roll of the constituency was stated therein. It has been contended by the petitioner that the omission of the serial number was a technical defect, not of substantial character, and such omission did not afford sufficient ground for rejecting the nomination paper. It has been, further, contended that the Returning Officer, while examining the nomination paper immediately on its presentation under section 33(5), should have detected the omission and got the same filled in then and there. The learned advocate for the Respondent No. 1 has on the other hand, urged before us that the said omission could not be filled in as it was not a clerical error which could be corrected, as contemplated by clause (a) of sub-section (5) of section 33, and that the omission was not a technical defect of un-substantial character. His contention is that, as there was non-compliance with the mandatory provisions of section 33(1), the nomination paper was rightly rejected. We, however, do not consider it necessary to decide this point, in view of the fact that there was no such omission in the other nomination paper [Ext. 1(24)]. The Returning Officer, as has been discussed above, was bound to consider the other nomination paper, when he found [Ext. 1(23)] to be defective.

A question has been raised that the petitioner was not of prescribed age, i.e. of age not less than 25 years, as contemplated by Article 173 of the Constitution of India, on the date of presentation of his nomination papers. It may be noted that the age of the petitioner entered in column number 4 of the nomination papers, Ext. 1(23) and Ext. 1(24), was 26 years. It has been urged on behalf of the Respondent No. 1 that the petitioner was of an age less than 25 years on the date of presentation of his nomination papers and, as such was not qualified

to stand as a candidate and, consequently, could not be deemed, in view of the provisions of section 32 of the Representation of the People Act, 1951, to have been nominated as a candidate for election. Mr. Awadhesh Nandan Sahay, appearing for the petitioner, has, on the other hand, vehemently opposed the raising of this question on the ground that no specific plea in the written statement of either of the two respondents (Respondent No. 1 and Respondent No. 16) on the question of age has been taken and no issue framed on such question. He has further urged that the question has been raised at a very late stage of the hearing and the petitioner had no opportunity to adduce evidence thereon. We think, it will not be fair and proper to look into any evidence upon this plea, of which no inkling whatsoever was given in the written statement and which was not raised until a very late stage when the evidence was about to be closed.

It may, however, be stated that in the finally published Electoral Roll, the age of the petitioner (Jamuna Nandan Prasad Singh, bearing serial number 604 Ka) is stated as "more than 21". It appears that the entry regarding the age being vague, the Electoral Registration Officer, on petitioner's application, corrected the entry of age into "26 years" in exercise of the powers conferred upon him by Section 25(b) of the Representation of the People Act, 1950.

Although the grounds stated by the Returning Officer for rejecting the nomination papers cannot be sustained, there is one vital ground for rejecting the nomination of the petitioner. It has been urged on behalf of the Respondents that the signature of the seconder, Hirday Singh, in both the nomination papers [Ext. 1 (23)] and [Ext. 1(24)] is not genuine. The petitioner has stated in the election petition that one Hirday Singh, whose name was entered in serial No. 902 of the Electoral Roll of the constituency, seconded the nomination papers. The Respondent No. 1, while admitting that the petitioner had filed two nomination papers, says in his written statement that the nomination papers were seconded by "some Hirday Singh". But the Respondent No. 16 has practically denied in his written statement that Hirday Singh, recorded in serial No. 902 of the Electoral Roll, signed as seconder on the nomination papers. Although there was no clear denial in the written statement of the Respondent No. 1 that Hirday Singh, bearing serial No. 902, signed as seconder, the parties clearly understood at the trial, as will appear from the facts which we shall state presently, that there was controversy between them regarding the genuineness of the signature of the seconder on the nomination papers. During the early stage of the hearing, Respondent No. 16 had filed a petition for an order directing the petitioner to produce the alleged seconder, Hirday Singh, as witness. The petitioner's advocate, thereupon, stated that he would not examine Hirday Singh as a witness. Later on, the Tribunal, however, considered that the evidence of Hirday Singh was material in this case and, as neither party proposed to examine Hirday Singh, he was examined as a court witness on 5th January, 1953. In his evidence, Hirday Singh stated that he had signed as seconder on the two nomination papers, his signatures on one of them being in English and his signatures on the other being in Hindi. He pointed out his signatures which were marked as Court Exts I and II. It is necessary to mention here that the signatures pointed out by Hirday Singh are not written in the proper column for signature of the seconder, namely column No. 16, but are written in column No. 13 which is intended for writing the name of the seconder. In column No. 16 of each of the nomination papers, there appears the signature of Hirday Singh in Hindi. The witness, towards the close of his evidence, was shown the signatures in column No. 16 when he stated that those signatures were not in his handwriting. It cannot, therefore, be supposed that the witness had no opportunity of looking at the signatures in the appropriate column and might have, out of confusion, pointed out the name written in column No. 13 as being his signatures. From the evidence of Hirday Singh, it thus, appears that the signatures in column No. 16 are not in his handwriting.

The petitioner's case, however, is that Hirday Singh really signed in column No. 16. In order to substantiate this case, the petitioner could not rely upon the evidence of Hirday Singh. But immediately after his evidence, the petitioner expressed his desire to have the signatures of Hirday Singh on the nomination papers compared with the specimen signatures of Hirday Singh by a Handwriting Expert, maintaining that the signatures in column No. 16, and not the writings in column No. 13, were really the signatures of Hirday Singh. The Tribunal, on the suggestion of the petitioner's advocate, took specimen signatures of Hirday Singh and sent the papers to a Handwriting Expert for examination of the signatures. The signatures in column No. 16 of the nomination papers, marked "A-1" and "A-2", were to be compared with the specimen signatures, marked "B". "B1" and "B2". The writings in column No. 13 were also to be compared with the

specimen signatures. The Handwriting Expert examined the disputed signatures, "A1" and "A2" with reference to the specimen signatures, "B" series, and gave an opinion to the effect that the writer of "B" series was not the writer of "A1" and "A2". This opinion was against the petitioner. The petitioner did not stop there, but he cross examined the Handwriting Expert and also examined three witnesses including himself (P.W. 3, P.W.4 and P.W.5) to prove that the signatures in column No. 16, which have been marked Exts. 4 and 4(1), are the signatures of Hirday Singh. In the above circumstances, it cannot be urged that there was no controversy between the parties regarding the genuineness of the signature of the seconder and, although no specific issue was framed on the above point, the parties had adduced all the evidence available to them on that question. It cannot, therefore, be said that any prejudice has been caused to any party by reason of a specific issue not being framed on the above point.

Let us, now, consider the question whether the signature of the seconder in the nomination papers, Ext. 1(23) and Ext. 1(24) is genuine. Mr. Henry Bennett, Handwriting Expert, has given a written report (Ext. 3) on examining the disputed signatures, A1 and A2, with reference to the specimen signatures, B, B1 and B2. His opinion, as has been stated above, is that the two sets of signatures are not handwriting of one and the same person. The Expert has also been examined as a witness in this case and has been cross examined by the petitioner at a great length. The main reasons for the opinion of the expert, as stated in Ext. 3, are that the writings in B series show a pen-manship markedly inferior to that depicted in A1 and A2. In B series, there are erratic shaky and awkwardly executed strokes, whereas in A1 and A2 there is a general uniformity or symmetry in the strokes. The pen-pressure in B series is irregular in that both heavy and light pressure is employed. In A series, the pressure is mainly medium throughout. Judged by varied pen-position present in B series, the shading location has been placed sometimes on down strokes and sometimes on horizontal ones. On the other hand, in A series, it is chiefly down strokes that show the shading location caused by pressure emphasis. Consistency in the detail features of design of many letters in B series is absent, whereas in A series when similar letters are compared with one another, the design is uniform. The habit of careless repairing of letters in B series is absent in A series. The movement or pen-control is under-developed and is of a weak flingure type in B series, whereas in A series it is of a superior wrist and fore-arm type. These are the main reasons for the opinion of the Expert. While cross examining the Expert, the petitioner's advocate took pains to point out to the Expert several similarities between the disputed signatures (A1 and A2) and the specimen signatures (B series), one of the prominent similarities being that the staff of some of the letters is hooked at the end. The learned advocate for the Respondent No. 1, on the other hand, pointed out several dis-similarities between the two sets of signatures. The Expert has stuck to his opinion about the signatures, as expressed in his report, even when certain similarities were pointed out to him by the petitioner. The Expert has stated in his evidence "I have ignored the similarities as pointed out by the petitioner's lawyer in giving my opinion as they have no fundamental value. By "fundamental" I mean such points as affect the muscular control of the pen which is the basis of habit of writing primarily." We find that the Expert has examined the writings with sufficient care and industry and we agree with him that the writings, B series, show a pen-manship markedly inferior to that shown by the writings, A1 and A2. We are, therefore, inclined to hold that the writer of B series is not the writer of A1 and A2. In other words, Hirday Singh, who wrote B series in presence of the Tribunal, is not the writer of the disputed signatures, A1 and A2, on the nomination papers.

We have already stated above that Hirday Singh, in his evidence, denied the signatures, A1 and A2, as being in his handwriting. Hirday Singh, it may be noted, is in service of the petitioner and has been working as his Patwari for the last 8 or 10 years. It cannot, therefore, be supposed that Hirday Singh has been won over by the opposite Party and has deliberately made false statement against the petitioner's case. There is no suggestion to this effect in the evidence of any of the witnesses. Nor can it be supposed that Hirday Singh made the above statement out of confusion. He first pointed out the writings in column No. 18 as being his signatures, one in English and another in Hindi, and when he was shown the signatures in column No. 16 he definitely said that those signatures were not in his handwriting. The evidence of Hirday Singh, thus, gives a death blow to the petitioner's case that Hirday Singh signed as seconder in column No. 16 of the nomination papers. The evidence of Hirday Singh is supported by the opinion of the Expert, which has been discussed above, and also by the evidence

of Jadava Singh (witness No. 1 for Respondent No. 1), a mokhtear at Barh, who is acquainted with the signature of Hirday Singh. The counter evidence of the petitioner's witnesses (P.W. 3, P.W.4 and P.W.5) on this point does not appear to us to be acceptable. The circumstance, that Hirday Singh's evidence was withheld by the petitioner, also points to the conclusion against the petitioner's case. Upon a careful consideration of all the evidence and facts on the record, we unhesitatingly come to the conclusion that Hirday Singh, whose name was entered in serial No. 902 of the Electoral Roll, did not sign as seconder on the nomination papers, Ext. 1(23) and Ext. 1(24).

Although the ground now taken, namely that the signature of the seconder is not genuine, is not the ground on which the Returning Officer rejected the nomination of the petitioner, the said ground can well be considered by the Tribunal while judging the propriety or impropriety of rejection of the petitioner's nomination. We find that the signature in column No. 16 of the nomination papers (which is the column for signature of the seconder) not being genuine signature, the nomination papers were clearly invalid. That being so, it cannot be held that the nomination of the petitioner was improperly rejected. We, therefore, answer the first part of issue No. 2 in the negative.

In view of the above finding, the second part of this issue, namely, whether the result of the election has been materially affected by the rejection of the petitioner's nomination, does not arise.

*Issues Nos. 3 and 4.*—In view of our decision on issue No. 2, we hold that the election in the constituency in question is not void and that the petitioner is not entitled to any relief.

(Sd.) BASU PRASAD, Chairman.

(Sd.) HARGOBIND PRASAD SINHA, Member.

HIGH COURT, PATNA;

The 25th May, 1953.

I have the advantage of reading the judgment dictated by the Chairman. Though I agree with the findings of the Chairman on the point that the second nomination paper was improperly rejected, I do not find myself in agreement with the order portion of the judgment and his findings as to whether we can decide the case on the points not specifically raised in the pleadings and the issues.

The petitioner had filed two nomination papers simultaneously at 11-50 A.M. on 24th November, 1951. On 26th November 1951 the day of scrutiny, the Returning officer rejected both the Nomination Papers with the following order:

"The first (Nomination Paper) is rejected. Serial Number of the Seconder is not given and there is no question of correction of any such minor defect.

The second (Nomination Paper) is rejected. The Proposer and Seconder of this Nomination Paper are the same persons who have filed another nomination paper in respect of this very candidate. The nomination paper placed at the top of this was (Serial No. 17 in red pencil) and this one was Serial No. 18 presented simultaneously and as such only the Serial No. 17 is to be considered and this one rejected".

I agree with the reasonings given in the judgment of the Chairman for holding that the second nomination paper was improperly rejected. In my view the first nomination paper was also improperly rejected. The reason for holding so is very simple. The first nomination paper has been rejected on the ground that the Serial Numbers of the Seconder does not find a place in it as stated above. On 24th November 1951 when the two nomination papers were filed simultaneously, the Returning Officer recorded the following order:

"Checked the entries in Roll relating to candidate and his Proposer and Seconder".

This order indicates that the Returning Officer had no difficulty with regard to the identity of the Seconder and this conclusion is strengthened when I find that he rejected the second nomination paper also with the following remarks:—

"The proposer and seconder of this nomination paper are the same persons who have filed another nomination paper in respect of this very candidate".

Section 36(4) of the Representation of the People Act, 1951, provides that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. This Sub-Section 4 comes after Sub-Section 2 which mentions the grounds (a) to (e) on which the Nomination Paper can be rejected by the Returning Officer. It is quite clear that the grounds (a), (b), (c) and (e) cannot come under the heading 'Technical Defect'. It seems, therefore, that the ground No. (d) only can come under 'Technical Defect'. Ground (d) reads as follows:

"The Returning Officer shall ..... refuse any nomination on any of the following grounds—(d) that there has been any failure to comply with any of the provisions of Section 33 or 34".

Section 34 deals with deposit of security and so it cannot be placed under Technical Defect. Therefore, I am left to only one conclusion, that is to say, that Section 33(4) contemplates a case which comes under Section 33. Let me shortly consider which of the Sub-Section 33 answers the description of Technical Defect mentioned in Section 36(4). The matters mentioned in Sub-Sections (2), (3) and (4) of Section 33 by no stretch of imagination can be placed under Technical Defect.

Therefore, the natural conclusion is that Section 36(4) applies to Section 33(1) which deals with the filling of the form of Nomination Paper. Section 33(5) casts a duty on the Returning Officer to correct any clerical error in the Nomination Paper. He shall satisfy himself that the names and Electoral Roll Numbers of the Candidate and his Proposer and Seconder as entered in the Nomination Papers are the same as those entered in the Electoral Rolls and the Returning Officer may permit any clerical error in the Nomination Paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the Electoral Rolls and where necessary, direct that any clerical or printing error in the said entry shall be overlooked. Trivial and immaterial error in filling up a nomination paper cannot invalidate it specially when there is no possibility of a mistake arising therefrom and there is no misdescription of the Constituency. The Returning Officer, in the present case, seems to have taken too narrow a view of the matter. If the Returning Officer thought that there was any room for doubt as to identity of the Seconder he would have been well advised to hold a summary enquiry and satisfy himself: See Doabia Election Cases Vol. I Page 295. To my mind 'error' includes error of omission and commission both. Therefore, I find that the Returning Officer should not have rejected the Nomination Paper for this technical defect, firstly because this technical defect should have been corrected by him under Section 33(5) and secondly because even in the absence of the Serial Number of the Seconder, the Returning Officer had no difficulty about the identity of the Seconder as it appears clear from his order rejecting the second nomination paper. I therefore find that the first nomination paper also was improperly rejected.

The respondents want to support the rejection of the nomination papers on grounds other than those mentioned by the Returning Officer. The nomination papers of the petitioner had been rejected by the Returning Officer on the ground mentioned in Section 36(2) (d), that is to say, that there has been any failure to comply with any of the provisions of Section 33 or Section 34. The Respondents now are anxious to support the order of rejection on the grounds mentioned in Section 36(2) (e), and (b) that is to say, that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud and that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act. These grounds were never taken either before the Returning Officer or this Tribunal. In this connection I have to examine the pleadings of the parties carefully. The petitioner in his Election Petition makes out a similar case in para 3 as follows:

"The Nomination Papers were filed nominating the Petitioner aforesaid. The said nomination papers were all proposed by Mr. Lakshmi Sinha, whose name is registered in the Electoral Roll of the constituency and who bears Serial Number 767 of such Electoral Rolls and seconded by Mr. Hirdaya Singh who bears Serial No. 902 of the Electoral Rolls of the said constituency". The Respondent No. 1 Jagdish Narain Singh filed written statement on 10th October 1952. In his written statement, instead of controverting the averment of the Petitioner in Para 3 of the Election Petition, Respondent No. 1 admits those averments in Para 3 which runs as follows:—

"But in fact the Petitioner has filed only two nomination papers before the Returning Officer, both of which were proposed by one Lakshmi Singh and seconded by some Hirdaya Singh".

In the subsequent paragraphs of his written statement he states that there were material errors and omissions in both the nomination papers filed by the petitioner and then proceeds to enumerate the two grounds on which the two nomination papers of the petitioner were rejected by the Returning Officer. I cannot gather from his written statement that he wanted to support the rejection of the nomination papers on the additional grounds that the signature of the Seconder is not genuine or has been obtained by fraud and that the petitioner is disqualified being less than 25 years of age.

On 7th November 1952 issues were settled and the following issues were framed:— (I) Is the Election Petition maintainable? (II) Have the nomination papers of the Petitioner been improperly rejected? If so, has the result of the Election been materially affected by such rejection? (III) Is the election wholly void. (IV) To what relief, if any, is the Petitioner entitled. On 22nd November 1952 the trial commenced and the case was opened by the Petitioner and on that very date Respondent No. 16—Lakshmi Mahto—filed a written statement. In para 3 of his written statement Respondent No. 18 states as follows:—

"The assertion made in Para 3 of the petition that the nomination papers purporting to bear the respective signatures of the proposer and seconder bore the signatures of the persons recorded in the Electors' Roll of the Constituency with respective registration numbers mentioned in the petition is not admitted".

The rest of his written statement contains the two grounds on which the returning Officer had rejected the two nomination papers of the Petitioner. From this written statement also I am not in a position to gather that he intended to challenge the Nomination Papers of the Petitioner on the two additional grounds mentioned above.

On 10th December 1952, Respondent No. 15—Hari Mahto—filed Written Statement which was rejected on 11th December 1952 on the ground that it raised new questions of fact which were not covered by the issues already framed. In his Written Statement, Respondent No. 15 had raised the following new questions of fact:— (I) The Petitioner was not duly enrolled as an elector and he did not possess the statutory qualifications for being a candidate for the same (Para 3), (II) That there were more than one Hirdaya Singh in village Samya and as such there was bona fide confusion regarding identification of the Seconder in case of omission of the Serial No. of the Seconder (Para 5). These were decidedly new questions of fact which were not covered by the issues already framed and therefore, the written statement of Respondent No. 15 was rightly rejected. But strangely enough the respondents have manoeuvred to raise during evidence stage those very new questions of fact and want the Tribunal to decide the case on them.

On 10th December 1952 Respondent No. 16 filed a petition for an order directing the petitioner to produce his seconder as a witness and on that very date petitioner's advocate intimated to the court that he would not examine the Seconder as his witness and that Respondent might examine him as his own witness. On 11th December 1952, Respondent No. 16 filed certain interrogatories to be answered by the petitioner. The interrogatories were rejected on the ground that they did not appear to be relevant. But it would be important to examine the interrogatories. They were two in number. (1) Is Hirdaya Singh who seconded your nomination paper, a person serving under you? (2) Did the said Hirdaya Singh depose as your Molazim in the court of Munsif, Barh, in Rent Suits Nos. 381 to 394 of 1952 on 23rd October 1952? The paragraph 3 of the Written Statement of Respondent No. 16 is vague and it may mean that the particular Hirdaya Singh who had signed the nomination papers as a second is a person different from Hirdaya Singh who bears Serial No. 902 in the Electoral Roll. It appears to me that this is what Respondent No. 16 meant by paragraph 3 because the interrogatories put by him point to the same conclusion. On 5th January 1953 Hirdaya Singh is examined as a Court witness. That this was the meaning attached to para 3 of the written statement is also clear from the Cross Examination of Hirdaya Singh. He deposed that he described himself as Hirdaya Narain Singh while giving evidence in Munsif Court, Barh. Jamuna Nandan Frasad Singh, the petitioner in this case had been examined on 18th March 1953. The same interpretation to para 3 of the written statement of Respondent No. 16 is to be gathered from the Cross Examination of Jamunandan Singh also. It is significant to notice how the two new questions of fact have cropped up during the course of evidence and how on realising the weakness of their case with regard to the grounds on which the Returning Officer had rejected the Nomination papers, the respondents are anxious to substantiate their case

on these new questions of fact. The one is the result of what Hirdaya Singh has said in his Cross Examination and the other of what Jamunandan Singh—The Petitioner—in his Cross Examination has said. The first point arises in this way, Hirdaya Singh asserted in his examination in Chief that he had signed the two nomination papers of the petitioner. Again in Cross examination, he stated that he had signed only two nomination papers of the petitioner and no third nomination paper. But due to confusion he stated that the signatures Ext. I and II are his and that the signatures marked X and X(1) for identification on the two nomination papers of the Petitioner are not in his hand. The Respondents want to build up a new case that the signatures of the Seconder are not genuine and have been obtained by fraud on this confused statement of Hirdaya Singh. The second question of fact with regard to the age of the petitioner arise due to the fact that the petitioner in his deposition stated his present age to be 26 but he his explained this discrepancy of age in his re-examination where he says that in November 1951, when he filed the nomination paper he was 26, but his present age is 28.

It is quite clear from the pleadings of the parties and the issues raised in this case that none of these two questions of fact were either raised in the pleadings or issues explicitly or by implications. The question therefore, arises whether the Tribunal can be called upon to decide the case on these questions. No doubt as evidence proceeded the Tribunal allowed the parties to adduce evidence on questions of age of the petitioner as well as the genuineness of the Seconder's signature. It is also clear that the petitioner requested the court to send the admitted and disputed signatures of Seconder to a hand-writing expert for comparison.

In election enquiries the C.P.C. must be followed and therefore no relief can be granted on any point which has not been clearly raised in the pleadings of the parties. It is also clear that evidence should be confined to the allegations in the pleadings and more particularly to the points at issue. In election enquiries the rules of pleadings are the same as mentioned in Order 6 of the Code of Civil Procedure. The object of order 6 C.P.C. is to introduce the leading rules of pleadings followed in England. In *Throp Vs. Holdsworth* (1876) 3Ch.D 637 Jessel, M.R. observed "The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of Order 19 (order 6 of C.P.C.) was to prevent the issue from being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby diminish expenses and delay, specially as regards the amount of testimony required on either side at the hearing".

In *Hemchand Vs. Peareal* 1942 P.C. 64 His Lordship Madhavan Nair has remarked as follows:—

"The procedure in allowing the parties to adduce evidence on points which arose on the evidence led by parties but were not raised in the pleadings or issues is irregular and should not be allowed without amending the pleadings and raising the necessary issues".

In this case neither the pleadings have been amended nor has there been any addition to the issues. The Defendant No. 16 in his written statement in para. 3 has merely stated that the assertion made in the paragraph 3 of the petition is not admitted. It cannot be said that by a plea stating that para. 3 of the petition is not admitted, the defendant had specifically dealt with each allegation of the fact contained in that paragraph. Order 8.r.3 C.P.C. enacts that:—

"It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages".

A defendant can either admit or deny the several allegations made in the plaint. If he decided to deny any such allegation he must do so clearly and explicitly. The denial of the respondent No. 16 in para. 3 of the written statement is an evasive denial which is prohibited by Q.8.r.4 C.P.C. A general denial cannot mean a denial by implication.

I am, therefore, inclined to hold that it is not open to the respondents to support the rejection of the nomination paper on fresh grounds not specifically raised either in the pleadings or issues. Therefore, it is not necessary for me to deal with the evidence relating to the additional grounds raised during the course of evidence. On the second question of fact as mentioned above, that is

to say, with regard to the disqualification of the petitioner on account of age the Chairman in his judgment has come to this finding:

"We think it will not be fair and proper to look into any evidence upon this plea, of which no inkling whatsoever was given in the written statements and which was not raised until a very late stage when the evidence was about to be closed". I respectfully entirely agree with this view but I feel that the same test should be applied to the evidence adduced on the first question of fact mentioned above, that is to say, that the signature of the Seconder is not genuine or has been obtained by fraud. On the reasoning stated above I feel that I need not enter into the evidence on this point; but inasmuch as a good deal of evidence has been adduced on this point. It would be proper for me to give my findings on the evidence also. The hand-writing expert has given a written report, Exhibit 3 and he has been examined as a witness in this case.

His opinion is against the Petitioner and is to the effect that the two sets of signatures sent to him for comparison are not in the hand-writing of one and the same person. I have to examine the opinion of the Expert given in writing and compare it with his evidence given in court. It is proper to keep in mind the caution which has been given in numerous cases with regard to the value of the opinion of an expert. It has been said that expert opinion must always be received with great caution but perhaps none so with more caution than the opinion of Hand-writing Experts. It is not proper to place implicit reliance on the evidence of Hand-writing Experts it is only when such evidence is supported by the evidence of witnesses thoroughly conversant with the disputed Hand-Writing that reliance may be placed on it. At the most, expert opinion on hand-writing can raise a suspicion as to the genuineness of a document but it is of no importance unless confirmed by other evidence. Therefore, I have to test his opinion and evidence with the help of other evidence of the witnesses who have seen the Seconder Hirdaya Singh signing the Nomination Papers. The evidence of Hirdaya Singh is on the same footing as of any other witnesses who have seen him writing. Three witnesses namely (1) Jamunandan Prasad Singh P.W. 3, (2) Lakshmi Singh P.W. 4 and (3) Srinandan Singh P.W. 5 have been examined to prove the signature of Hirdaya Singh P.W. No. 3 is the Petitioner himself and he has stated that the proposer and the seconder signed the nomination papers in his presence. He has also stated that the proposer Lakshmi Singh is the full brother of Hirdaya Singh and they are the sons of one Atal Singh. He has further said that there is no other man in his village by the name of Hirdaya Singh, Lakshmi Singh or Atal Singh. P.W. No. 4 Lakshmi Singh the full brother of Hirdaya Singh has also deposed to the same effect. He stated that Hirdaya Singh signed the two nomination papers as seconder in his presence and his signatures are marked exhibit 4 and 4(1). P.W. No. 5 Srinandan Singh in my village." No doubt Hirdaya Singh gives a contrary evidence but stated "It is not a fact that my statement that Hirdaya Singh signed in my presence is incorrect. It is also not a fact that there is more than one Hirdaya Singh in my village." No doubt Hirdaya Singh gives a contrary evidence but the fact remains that he asserts that he signed the two nomination papers. It is only when the two columns of the nomination papers are shown to him, one relating to the name of the seconder and the other relating to the signature of the seconder that he makes a confusion and says that the writing 'Hirdaya Singh' in the columns of the names are his signatures exhibit I and II. Once having made a mistake in his examination in Chief he maintains this mistake in the Cross examination also when he says that the signature marked X and X1 for identification on the two nomination papers of the Petitioner are not in his hand. It is not possible for me to probe into the reasons why Hirdaya Singh has made such a statement. It may be due to his nervousness or to his idiocy. I, therefore, find that there are three direct witnesses on the point that the signatures on the nomination papers were those of Hirdaya Singh. No doubt the simplest and the most satisfactory method is to call the writer himself but it is not absolutely necessary to call him as the testimony of one who saw him write is also a primary evidence. I come to the conclusion, therefore, that the primary evidence preponderates in favour of the finding that Hirdaya Singh signed the two nomination papers. We have to see now how far the evidence of the expert outweighs the direct evidence. The expert has given the opinion against the Petitioner and has stated the reason for it.

The effect of the report of the expert has been to a large extent modified by his evidence in court. Though he sticks to his opinion about the signature as expressed in the report, I cannot shut my eyes to several similarities pointed out in his evidence in the writing of exhibit B series and exhibits A1 and A2. I shall shortly point out some of these similarities. I find where a letter ends

with a staff it is invariably hooked to the right. The expert says in his evidence "Similarities as shown in the signatures in B series and A1 and A2 are 50 per cent. inconspicuous. Some inconspicuous features disclose a habit of the writer. Hooking of the staff is a conspicuous feature which discloses a habit of writer which it is very difficult to take off." The hooking of the staff is apparent even in the "Ikar" of 'Sinha' the staff in "Ya" also appears to be hooked in some cases prominently and in some slightly. It may be said that the staff in "Ya" in A2 is very slightly hooked. But it is an instance of the variation of a habit which proves the rule. The final stroke of "Sa" in B, B1, B2 and A2 is done in one stroke and the only exception is in A1. This also is an instance of variation of habit. "Ha" in B, B1, B2 and A2 are similar but there is a decided variation in A1. Then again the top stroke of "Ikar" is prominently arched in all the writings. The "Rikar" in Hr1 in all the writings are of the same shape except in B1 which the expert ascribed to failure of ink. In all the writings the Letter "Ya" is broader than the other letters and in all of them there is a well extended middle stroke. Keeping in view the similarities stated above I conclude that the evidence of the expert has neutralised his opinion to a large extent and therefore very little value, if any, can be attached to his opinion. The result is that the direct evidence of the signature of Hirdaya Singh remains unaffected. I, therefore, hold that the signatures of Hirdaya Singh on the two nomination papers are genuine and not forged. There is ample evidence on the record to show that there is only one Hirdaya Singh in that village. The apparent change in the designs of letters that is discernible in Ext. B series may be due to the nervousness of Hirdaya Singh who had written Ext. B Series in court. The expert explains thus "If the mind of the writer is affected with work or fear at the time of writing, his writing is likely to be affected. The signature B is erratic in writing. The erratic writing in B may be due to nervousness".

My conclusion, therefore, is that the nomination papers of the Petitioner were improperly rejected by the Returning Officer. The result of the election has been thereby materially affected. I, therefore, find that the election of the Respondent No. 1 should be declared to be void.

HIGH COURT, PATNA;

(Sd.) ADITYA NARAYAN LAL, Member.

The 25th May, 1953.

#### JUDGMENT OF THE TRIBUNAL

In accordance with the majority opinion, the Tribunal finds that the nomination of the petitioner was not improperly rejected and that the election in the constituency in question is not void.

The result, therefore, is that the election petition fails.

#### ORDER

The election petition be dismissed. In the circumstances of the case we order that each party shall bear its own costs.

(Sd.) BASU PRASAD, Chairman

(Sd.) HARGOBIND PRASAD SINHA, Member

(Sd.) ADITYA NARAYAN LAL, Member.

HIGH COURT, PATNA;

The 25th May, 1953.

[No. 19/38/52-Elec.III/8587.]

By Order  
P. R. KRISHNAMURTHY, Asstt. Secy.

